




# Mental Health Legislation and Mental Capacity Act Committee

Tue 30 January 2024, 10:00 - 12:00

MS Teams

## Agenda

10:00 - 10:05 5 min	<b>1. Welcome &amp; Introductions</b> <i>Ceri Phillips</i>
10:05 - 10:05 0 min	<b>2. Apologies for Absence</b> <i>Ceri Phillips</i>
10:05 - 10:05 0 min	<b>3. Declarations of Interest</b> <i>Ceri Phillips</i>
10:05 - 10:05 0 min	<b>4. Minutes of the Meeting held on 31 October 2023</b> <i>Ceri Phillips</i>  4 - Minutes MH Committee 31.10.2023 - CP.pdf (8 pages)
10:05 - 10:05 0 min	<b>5. Actions from the meeting held on 31 October 2023</b> <i>Ceri Phillips</i>  MH Committee Action Log 30.01.2024.pdf (1 pages)
10:05 - 10:05 0 min	<b>6. Committee Chair's Actions</b> <i>Ceri Phillips</i>
10:05 - 10:05 0 min	<b>7. Any Other Urgent Business Agreed with the Chair</b> <i>Ceri Phillips</i>
10:05 - 10:30 25 min	<b>8. Mental Capacity Act</b>
10:30 - 11:05 35 mins	<b>8.1. Mental Capacity Act Monitoring Report and DoLS monitoring</b> <i>Jason Roberts</i>  8.1 MCA DOLS Oct - Dec 23final draft2.pdf (18 pages)
	<b>8.1.1. Consent across Welsh Health Boards</b>

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**10:30 - 11:05 9. Mental Health Act**

35 min

**9.1. Mental Health Act Monitoring Exception Report**

10 mins

Paul Bostock / Daniel Crossland

 9.1a - Mental Health Act Monitoring Exception Report January 2024.pdf (8 pages) 9.1b - Mental Health Act Monitoring Report October - December 2023.pdf (50 pages)**9.2. Right Care, Right Person Update**


10 mins

Jason Roberts / Daniel Crossland

 9.2 - RCRP Briefing Note for Health and Social Care Partners.pdf (2 pages)**9.3. Section 117 Supreme Court Ruling Implications Update**

10 mins

Dan Crossland

 9.3 -Section 117 Supreme court ruling report for MHMCLC Jan 24.pdf (2 pages)**9.4. HIW Annual Report**

5 mins

Dan Crossland

 9.4 - HIW Annual report Covering report for MHMCLC Jan 24.pdf (2 pages)

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**11:05 - 11:20 10. Mental Health Measure**

15 min

**10.1. Mental Health Measure Monitoring Report including Care and Treatment Plans Update Report**

15 mins

Paul Bostock / Daniel Crossland

 10.1 - MHLC - Mental Health Measure January 2024 AMS and CAMHS Final.pdf (11 pages)

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**11:20 - 11:25 11. Items to bring to the attention of the Committee for Noting / Information**

5 min

**11.1. Sub-Committee Minutes**

Jeff Champney-Smith / Robert Kidd

i) Hospital Managers Power of Discharge Sub-Committee Minutes

ii) Mental Health Legislation and Governance Group Minutes

 11.1a - PoD Minutes January 2024.pdf (3 pages) 11.1b - MHLGG Minutes and Action Log January 2024.pdf (8 pages)

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**11:25 - 11:30 12. Items for Approval / Ratification**

5 min

**12.1. Policies**

5 mins

i) Receipt of Applications for Detention under the Mental Health Act Procedure

Chair: Rachel  
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ii) *Mental Health Review Tribunal Procedure and Guidance*

iii) *Recovery and Maintenance Programme (RAMP) Protocol - Verbal Update*

 12.1 Policy Cover Report.pdf (3 pages)

 12.1.1 Detention under the Mental Health Act 1983 Procedure.pdf (14 pages)

 12.1.2 Mental Health Review Tribunal for Wales procedure & guidance.pdf (18 pages)

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**11:30 - 11:35 13. Any Other Business**

5 min

*Ceri Phillips*

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**11:35 - 11:35 14. Review of the Meeting**

0 min

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**11:35 - 11:35 15. Date & Time of Next Meeting**

0 min

*Ceri Phillips*

30th April 2024 at 10:00-12:00

Via MS Teams

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**Minutes of the Mental Health Legislation and Mental Capacity Act Committee  
Held on 31 October 2023  
Via MS Teams**

<b>Chair:</b>		
Ceri Phillips	CP	Committee Chair / University Health Board Vice Chair
<b>Present:</b>		
Sara Moseley	SM	Committee Vice Chair / Independent Member – Third Sector
Susan Elsmore	SE	Independent Member - Council
<b>In Attendance:</b>		
Matt Phillips	MP	Director of Corporate Governance
Francesca Thomas	FT	Head of Corporate Governance
Rebecca Aylward	RA	Deputy Executive Nursing Director
Daniel Crossland	DC	Director of Operations - Mental Health
David Seward	DS	Mental Health Act Manager
Neil Jones	NJ	Clinical Board Director – Mental Health
Jeff Champney-Smith	JCS	Chair, Powers of Discharge Sub-Committee
Katie Simpson	KS	Deputy General Manager for Children, Young People & Family Health Services (DGM-CYPFS)
Mark Doherty	MD	Director of Nursing – Mental Health
<b>Observers:</b>		
<b>Secretariat:</b>		
Rachel Chilcott	RC	Corporate Governance Officer
<b>Apologies:</b>		
Paul Bostock	PB	Chief Operating Officer
Meriel Jenney	MJ	Executive Medical Director
Suzanne Rankin	SR	Chief Executive
Jason Roberts	JR	Executive Nurse Director
Rhian Thomas	RT	Independent Member – Capital & Estates

Item No	Agenda Item	Action
<b>MHLMCA 23/10/001</b>	<b>Welcome &amp; Introductions</b>  The Committee Chair (CC) welcome everybody to the meeting in English and in Welsh.	
<b>MHLMCA 23/10/002</b>	<b>Apologies for Absence</b>  Apologies for Absence were noted	
<b>MHLMCA 23/10/003</b>	<b>Declarations of Interest</b>  No Declarations of Interest were noted.	
<b>MHLMCA 23/10/004</b>	<b>Minutes of the Meeting held on 1 August 2023</b>  The Minutes of the Meeting held on 1 August 2023 were received.  <b>The Committee Resolved that:</b> a) The minutes of the meeting held on 1 August 2023 were agreed as a true and accurate record.	
<b>MHLMCA 23/10/005</b>	<b>Action Log from the meeting held on 1 August 2023</b>	

	<p>The Action Log was received and discussed.</p> <p>MHLMCA 23/05/010 – it was noted that the module was not ready to be put onto ESR as of yet. An update would be deferred to the January 2024 Committee.</p> <p>MHLMCA 23/05/013 – an update would be provided in the April 2024 Committee.</p> <p><b>The Committee Resolved that:</b></p> <p>a) The Action Log was noted.</p>	
<b>MHLMCA 23/10/006</b>	<p><b>Chair's Action taken since last meeting</b></p> <p><b>The Committee Resolved that:</b></p> <p>a) No Chair's Actions were taken since the last meeting.</p>	
<b>MHLMCA 23/10/007</b>	<p><b>Any Other Urgent Business Agreed with the Chair</b></p> <p><b>The Committee Resolved that:</b></p> <p>a) No other urgent business was agreed with the Chair.</p>	
	<b>Mental Capacity Act</b>	
<b>MHLMCA 23/10/008</b>	<p><b>Mental Capacity Act Monitoring Report and DoLS Monitoring</b></p> <p>The DEND presented the Monitoring report which provided a general update on current issues relating to the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards. A summary of the updates can be found in the report alongside the papers received for the Mental Health Committee on the 31.10.2023 for Agenda item 8.1.</p> <p>The IM-C asked when the memorandum of understanding between LAs and the Health Board would be in place.</p> <p>The DEND responded that it would be in place by the following Mental Health Committee in January 2024.</p> <p>The IM-C asked how long this would take to have an impact.</p> <p>The DEND responded that the work programme from the peer review would create a lot of recommendations, and that while there would be incremental improvements, it could be around 12-18 months before they saw any real results.</p> <p>The CC commented that the Consent Lead seemed to be a busy part-time role.</p> <p>The DEND responded that the individual was on a 12-month secondment which was up for review in June 2024.</p> <p>In terms of compliance, the CVC noted that it would be interested to know how they compared to other Health Boards.</p> <p>The DEND responded that for Deprivation of Liberty, they were on par with other Health Boards, however she was unsure from a consent perspective.</p> <p><u>Action:</u></p>	

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	<p>1. For a comparative benchmarking piece of work on the Deprivation of Liberties and Consent across the Welsh Health Boards to be presented to the following Committee (RA / DS).</p> <p><b>The Committee resolved that:</b></p> <p>a) The contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators were noted.</p>	
	<b>Mental Health Act</b>	
<b>MHLMCA 23/10/009</b>	<p><b>Mental Health Act Monitoring Exception Report</b></p> <p>The MHAM presented the Exception report which provided further information relating to the wider issues of the Mental Health Act (MHA). He highlighted that they had a few fundamentally defective reports, with one application and three 5(2) reports. A summary of these incidents is available to view in detail in the report alongside the papers received for the Mental Health Committee on the 31.10.2023 for Agenda item 9.1.</p> <p>The MHAM explained that these incidents highlighted the need for training within UHW. He had worked with colleagues in EU and wards and they had produced a training package, and a list of the main wards they received 5(2)s from had been pulled together. The MHAM explained that in the new year, he would provide training on 5(2)s in these wards.</p> <p>The CC commented that it was alarming to have 3 fundamentally defective reports in one quarter, but that the responsibility did not just lie with the MHAM.</p> <p>The CBD-MH confirmed that he would liaise with the EMD given the level of basic errors highlighted in the incidents, and that it would be brought to the following Clinical Board Directors meeting.</p> <p>The IM-C noted that the correct attention was not given to these legal forms.</p> <p>The MHAM agreed, and explained that he would impress the urgency and importance of these situations onto the professionals who were responsible for these forms. He added that people might not know that the contact information and the help was there if needed.</p> <p>The CC noted the team had their full support, and he asked for an update to be brought to the following Committee.</p> <p><u>Action:</u></p> <p>1. To spread awareness and increase education on the process for completing the necessary legal documentation, and for an update to be brought to the following Committee (DS).</p> <p>In terms of Section 136, the MHAM provided the following summary:</p> <ul style="list-style-type: none"><li>- The use of Section 136s had decreased within the previous quarter;</li><li>- They had 3 Section 136's which had lapsed with no assessments – two were due the patient having taken an overdose and so they were not medically fit for assessment, and the other incident they had classed as a lapse because the assessment team had arrived late;</li><li>- The number of CAMHS assessments remained the same at 12;</li><li>- There had been 9 repeat presentations.</li></ul>	

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	<p>The CVC asked if there was a reason for the spike in Section 136s in hospital assessments above the control limit.</p> <p>The MHAM responded that within the previous quarter, it was due to a very young new presentation which took them above the control limit. He confirmed that the patient had been moved to a placement out of area.</p> <p>Regarding Tribunals, the MHAM highlighted that:</p> <ul style="list-style-type: none"><li>- They had received new guidance which set out new timescales of when an application for observation needed to be put into the tribunal, and what constituted as an observer.</li><li>- They had received three observer requests – two had been approved, and one was declined due to it being submitted outside of the timescale.</li><li>- A list of accredited Mental Health Solicitors used to be issued in the wards, however the tribunal had stopped this with immediate effect. Now the expectation was on the Mental Health Act Administrators to complete this task on behalf of the Tribunal, and they had stopped sending Clerks to Section 2 Tribunal hearings.</li><li>- This had put a lot of added pressure onto administrators to do a clerk’s role, and it had caused a lot of difficulty for the UHB.</li><li>- There had been no discussion or consultation with colleagues, and all Health Boards were in the same position.</li></ul> <p>The CC suggested that he would bring the issue to the Vice Chairs Group who could take it to the attention of Welsh Government (WG).</p> <p>The CVC asked whether the administration of the tribunal was devolved to WG, or if this was a UK-wide arrangement.</p> <p>The MHAM responded that the tribunal had been devolved to WG, however the President and Deputies were separate as they were part of the judicial system.</p> <p>The MHAM added that he was in the process of reconfiguring how their team could support the training due to a key team member going on maternity leave.</p> <p><b>The Committee resolved that:</b></p> <ul style="list-style-type: none"><li>a) The approach taken by the Mental Health Clinical Board to ensure compliance with the appropriate Mental Health legislation, as set out in the report was noted.</li></ul>	
<p><b>MHLMCA</b> <b>23/10/010</b></p> <p>Chilcott, Rachel 23/01/2024 15:37:53</p>	<p><b>Feedback and Next Steps from the Community Mental Health Summit (verbal)</b></p> <p>The DO-MH provided the following summary from the Community Mental Health Summit:</p> <ul style="list-style-type: none"><li>- PCIC, Mental Health, and Children &amp; Women’s Clinical Boards were involved in this;</li><li>- They discussed the key challenges that community mental health teams were facing;</li><li>- <u>ADHD referrals</u> had increased over recent years. These referrals required a psychiatrist to prescribe, and so the demand had largely fallen into secondary care (CMHT).</li></ul> <p>In turn, this had an impact on their compliance with the Part 2 targets, as Part 1 individuals who were seen within a Part 2 service were automatically made a Part 2 patient.</p>	

- 'Stable severe' provision was also legislated as being a Part 1 service was still being seen within Part 2 services;
- These both contributed to provide the highest caseloads in Wales – in C&V, they currently had 838 people per 100,000 on a Part 2 Caseload (whereas the average in Wales was around 600 per 100,000 people).

The CVC asked if there was a creative way to train and support nurse prescribers and non-psychiatry staff to fill the prescribing role more.

The DO-MH responded that there were three issues with ADHD referrals:

1. The assessments were quite in depth and took around 1-2hrs to complete, plus the time to write up.
2. Individuals transferring from CAMHS or from prison, where they might have received a diagnosis from elsewhere, would come into secondary services and require allocation.
3. There had sometimes been concern in the quality of private assessments and diagnoses, and on occasion they had felt that they did not compare to NHS assessments.

The DO-MH responded that given the demand they had recently experienced, they would need a completely different way of managing the assessment and prescribing process. He added that there had been extensive discussions around this, and GP providers were happy to engage, however this would be a large piece of work.

The DO-MH continued with the Verbal Update, and summarised that:

- Pathways – patients had complained over recent years around the multiple assessments and entry points.
- They had a new service provision with 111 press 2.
- There were particular risks and pinch points with community provision across the services, and the Summit resulted in productive discussions. They had proposed a number of possible solutions, and discussions would be held around the next steps;
- They talked about large scale workforce and service changes – therefore there would need to be decent consultation and discussion around planning before this work progresses.

In terms of Children & Women Clinical Board, the DGM-CYPFS added that:

- They had received positive recognition from PCIC in terms of the structural changes made within the Clinical Board, for example the single point of access and their restructured assessment team.
- More work was needed around early intervention and prevention, and how they utilised their schools in the REACH team and with GPs.
- One of the biggest challenges in relation to young people was around suitable places across the Health Board estate for those aged between 16-17 years old who were in emotional distress or crisis – they hoped for resolution with Clinical Boards over the coming months.

The CC explained that the atmosphere in the summit was one of collaboration between primary care providers and the respective Clinical Boards. It was agreed at the Summit that there was not a need for a follow-up meeting, as they had developed action plans which were underway.

**The Committee resolved that:**

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	a) The contents of the report were noted.	
<b>MHLMCA 23/10/011</b>	<p><b>Section 117 Supreme Court Ruling Implications</b></p> <p>The DO-MH introduced the report and summarised that:</p> <ul style="list-style-type: none"> <li>- An SBAR had been produced and submitted;</li> <li>- Following a Secretary of State decision, the key change was that Section 117 responsibility of an individual changes at the point of a Section 3;</li> <li>- This could provide a potential challenge to the UHB – C&amp;V was at particular financial and clinical risk due to the very high number of placements and individuals placed here by other Health Boards and Local Authorities. There was a degree of uncertainty around the number and quality of these placements, and the responsibility of the provider;</li> <li>- They had sought legal advice to clarify queries about the retrospective implications of the ruling;</li> <li>- The NCCU had also sought legal advice – The DO-MH had met with peer leads across Wales to have an open discussion about the Section 117 ruling. Discussions were also had with LA leads across Wales around the legal ruling and implications. Further actions included to develop a Freedom of Information (FoI) request to go into English and Welsh Health Boards to understand the degree to which the risk sits with CVUHB.</li> </ul> <p>The IM-C noted that prior to the Supreme Court ruling, the responsibility had been with the LAs, and she asked what CVUHB thought.</p> <p>The DO-MH responded that C&amp;V was concerned. Part of the challenge was that while they were aware of a number of providers that offered/commissioned work within Cardiff, they were unsure quite how many there were. He added that they would have to guard against being entirely financially driven as it might be divisive between the UHB and LAs – they had to be unified to manage the risks.</p> <p>The DO-MH explained that this had been discussed with the finance team to ensure they were fully aware of the implications and that it formed part of their risk register. Additionally, conversations had started with the DCG and his team around the risk score.</p> <p><u>Actions:</u></p> <ol style="list-style-type: none"> <li>1. For an update on any new developments and for clarity over the potential risks regarding the Section 117 rulings to be brought to the following Committee (DC).</li> </ol> <p><b>The Committee resolved that:</b></p> <p>a) The report was noted.</p>	
	<b>Mental Health Measure</b>	
<b>MHLMCA 23/08/012</b>	<p><b>Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report</b></p> <p>The DO-MH and the DGM-CYPFS presented the Monitoring report which provided further information on the UHB Mental Health Measure performance. The report is available to view alongside the papers received by the MH Committee on 31.10.2023 for Agenda item 10.1:53</p>	

	<p>Regarding the CMHT caseloads within Part 2, the IM-C asked what the impact this had on staff morale.</p> <p>The DO-MH responded that this was tricky to answer, but noted that:</p> <ul style="list-style-type: none"><li>- The number of vacancies within community and mental health terms was significant, with some areas at around 40% vacancy rate – this had improved more recently however;</li><li>- Vacancies were potentially due to the risks/level of responsibility that the teams face, as well as the additional caseload due to other vacancies within the team. In addition, the cost of living may be an issue as there was no shift allowance or weekend working – as a result, the number of applications for Part 2 services had been low on occasions, however there was variation across teams.</li><li>- They had listened and engaged with staff to think about reasonable alternatives – they conducted an equality audit of Care and Treatment Plans each quarter, which had indicated that there were some performance issues in some areas.</li><li>- The Recovery College’s approach suggested that they would like to develop a course around care and treatment planning for staff, users and carers to engage with – this was a particularly challenging environment.</li></ul> <p>The IM-C congratulated the Mental Health Clinical Board for their level of compliance and advocacy standards in terms of Part 4.</p> <p>The CC reiterated that figure that the average CMHT caseload within Cardiff was 838 per 100,000 population, and asked to what extent there was variation within C&amp;V.</p> <p>The DO-MH responded that they did not see a huge variation as they did not have a Part 1 ‘stable severe’ or RAMP provision currently in place – this was universally an issue across all teams, particularly with ADHD and ‘stable severe’ provision. Additionally, they had a challenge around the digital approach.</p> <p><b>The Committee Resolved that:</b></p> <p>a) The contents of the report were noted.</p>	
<p>MHLMCA 23/10/013</p> <p>Chilcott, Rachel 23/01/2024 15:37:53</p>	<p><b>Development of a Recovery and Maintenance Protocol as part of a Part 1 Scheme under the Mental Health (Wales) Measure 2010</b></p> <p>The DO-MH provided the Committee with a summary of the Recovery and Maintenance Provision (RAMP) which aimed to resolve some of the challenges around that particular Part 2 issue. He summarised that:</p> <ul style="list-style-type: none"><li>- The protocol was that Part 1 service users were attending a Part 2 service, and therefore were being counted in the numbers of their Part 2 compliance;</li><li>- A draft of the RAMP had been produced and they were receiving comments/feedback from various services. They would need to undertake an equality health impact assessment to ensure they did not disadvantage anyone with protected characteristics. The pathway would also need work to ensure people were clear on how it would be used;</li><li>- There had been significant work around this and it had been discussed in some of the locality implementation groups with service users present. They aimed to have a completed draft by the following Controlled Oversight Group meeting;</li><li>- They had hoped to implement this as soon as possible – they felt that this was material in their long-term improvement in their Part 2 possession to achieve the 7% a month growth.</li></ul>	

	<p><b>The Committee resolved that:</b></p> <p>a) The Development of a Recovery and Maintenance Protocol as part of a Part 1 Scheme under the Mental Health (Wales) Measure 2010 was noted.</p>	
	<b>Items to bring to the attention of the Committee for Noting / Information</b>	
<b>MHLMCA 23/08/014</b>	<p><b>Sub-Committee Meeting Minutes:</b></p> <p>The Committee received copies of the Sub-Committees' meeting minutes:</p> <ul style="list-style-type: none"> <li>Hospital Managers Power of Discharge Sub-Committee Minutes – October 2023</li> <li>Mental Health Legislation and Governance Group (MHLGG) – October 2023.</li> </ul> <p>The C-PDSC highlighted that:</p> <ul style="list-style-type: none"> <li>Their main concern was the quality of care and treatment plans;</li> <li>They were concerned with the drop in the percentage of advocacy managers hearings – this had been taken to M-LAG to determine the cause and what could be done about this;</li> <li>They were returning to face-to-face hearings which had gained some traction.</li> </ul> <p>The DO-MH offered to discuss whether specific areas fit in with their audit documentation.</p> <p>The MH-AM commented that he had had a meeting with the Advocacy Team leader and manager the previous week to see if they could streamline the service for referral traffic.</p> <p><b>The Committee Resolved that:</b></p> <p>a) The Sub-Committee Meeting Minutes were noted.</p>	
	<b>Items for Approval / Ratification</b>	
<b>MHLMCA 23/10/015</b>	No items for approval.	
<b>MHLMCA 23/08/016</b>	<p><b>Any Other Business</b></p> <p>The CC noted that the WG were in the process of developing a new Mental Health strategy which would be in parallel with the Suicide and Self-Harm Strategy for Wales.</p> <p>The CC added that the Mental Health Wales Bill had been proposed and accepted as one of the Private Member's bills to be taken forward by the Senedd in the forthcoming year.</p> <p>The CC acknowledged that this was the IM-C's final meeting, and he expressed thanks for her commitment to the Mental Health Agenda.</p>	
<b>MHLMCA 23/10/017</b>	<p><b>To note the date, time and venue of the next meeting:</b></p> <p>30<sup>th</sup> January 2024 Via MS Teams</p>	

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**Action Log**  
**Mental Health Legislation and Mental Capacity Act Committee – 31 October 2023**  
**(Updated For 30 January 2024 Meeting).**

MINUTE REF	SUBJECT	AGREED ACTION	DATE	LEAD	STATUS/COMMENT
<b>ACTIONS COMPLETED</b>					
<b>Actions in Progress</b>					
<b>MHLMCA 23/05/013</b>	<b>Draft Mental Health bill - Joint Committee Report</b>	Update to be provided at a future meeting to include timescales on implementation of the draft Mental Health Bill	<b>02.04.2024</b>	Jason Roberts / David Seward	<b>Update in April 2024</b>  An update was initially scheduled for 31.10.2023, however it was rescheduled to the April 2024 meeting.
<b>MHLMCA 23/05/010</b>	<b>Mental Health Act Monitoring Exception Report</b>	Mental Health Act e-Learning module to be added to ESR as a mandatory module once written.	<b>30.01.2024</b>	Jason Roberts / David Seward	<b>Update in January 2024</b>  An update was initially scheduled for 31.10.2023, however it was rescheduled to the January 2024 meeting.
<b>MHLMCA 23/10/008</b>	<b>Mental Capacity Act Monitoring Report and DoLS Monitoring</b>	For a comparative benchmarking piece of work on Consent across the Welsh Health Boards to be presented to the following Committee.	<b>30.01.2024</b>	Rebecca Aylward / Jason Roberts	<b>Update in January 2024</b>
<b>MHLMCA 23/10/009</b>	<b>Mental Health Act Monitoring Exception Report</b>	To spread awareness and increase education on the process for completing the necessary legal documentation, and for an update to be brought to the following Committee.	<b>30.01.2024</b>	David Seward	<b>Update in January 2024</b>
<b>MHLMCA 23/10/011</b>	<b>Section 117 Supreme Court Ruling Implications</b>	For an update on any new developments and for clarity over the potential risks regarding the Section 117 rulings to be brought to the following Committee.	<b>30.01.2024</b>	Daniel Crossland	<b>Update in January 2024</b>
<b>ACTIONS REFERRED TO COMMITTEES OF THE BOARD / OTHER</b>					

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Report Title:	Mental Capacity Act (MCA) and DoLS monitoring			Agenda Item no.	8.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	x	Meeting Date:	30 <sup>th</sup> January 2024
		Private			
Status <i>(please tick one only):</i>	Assurance	x	Approval	Information	
Lead Executive:	Executive Nurse Director				
Report Author (Title):	Deputy Executive Nurse Director				
Main Report					
Background and current situation:					
<p>The purpose of this report is to provide a general update on current issues relating to the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards.</p> <p>The MCA indicators provide a level of detail on the number and type of IMCA referrals along with an overview of Mental Capacity Act training compliance across the UHB. As previously, there is additional information contained within this report relating to the further training being provided with the use of additional Welsh Government funding.</p> <p>The report also contains detail in relation to the progress made following the appointment of the MCA Practitioners.</p> <p>The DoLS indicators provide an overview of the last year's applications and assessments.</p> <p>In addition, this report provides information relating to the Consent agenda.</p> <p>Further to the UK Government's announcement regarding the indefinite delay of the LPS, we will continue to focus on promoting awareness and understanding of the MCA in practice and look at how we can strengthen and improve our current DoLS processes going forward.</p>					
Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:					

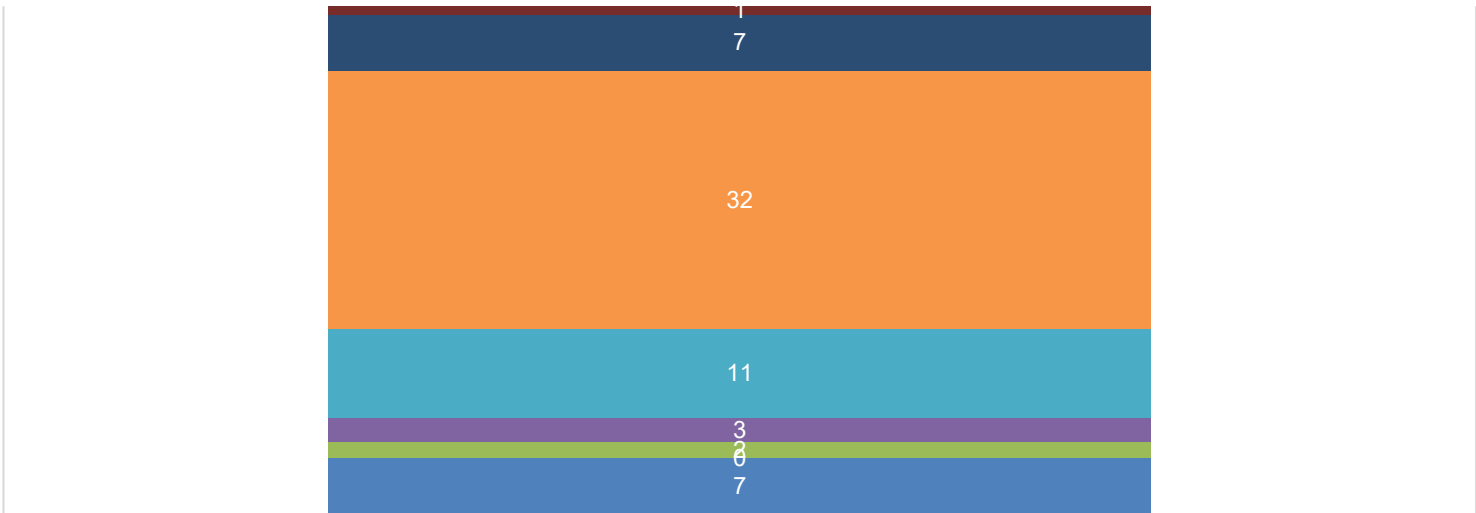
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**Mental Capacity Act Monitoring actions:**

- **Mental Capacity IMCA Referral type**

The MCA Indicators outline the breakdown of IMCA referrals for the period from Oct-Dec 2023. Referral rates are noted to have increased this quarter. The number of RPR referrals has slightly increased this quarter from 32 last quarter to 63 referrals this quarter. Referrals for Serious Medical Treatment have remained at a similar level to previous quarter.

**IMCA REFERRALS OCT - DEC 2023**  
**TOTAL - 63**



IMCA REFERRAL BY TYPE

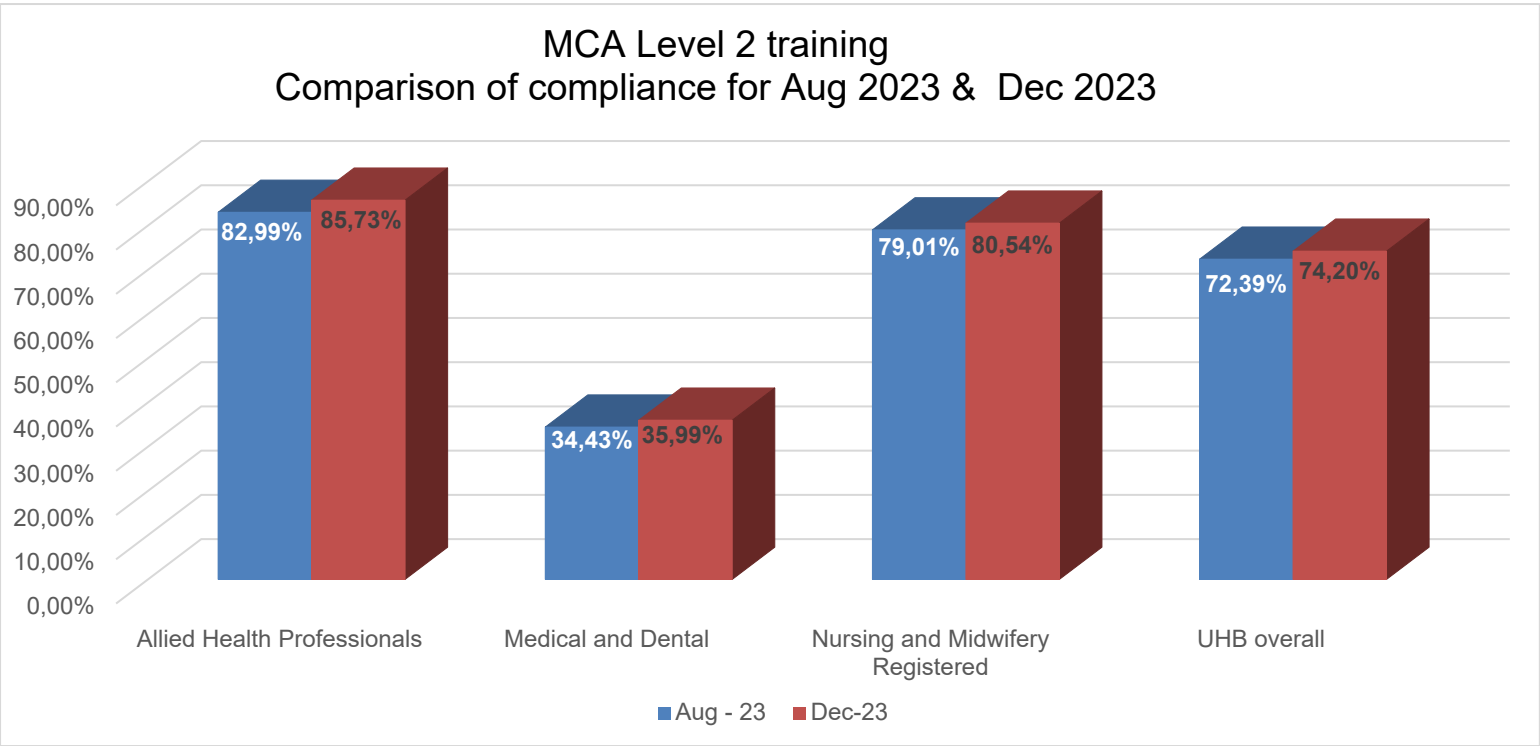
- |   |   |
|---|---|
| ■ s39a - Request for standard authorisation = 7 | ■ s39c - Interim Relevant Person's Representative (RPR) = 0 |
| ■ s39d - Support following authorisation = 2    | ■ Care Review = 3   |
| ■ Long Term Move Accommodation = 11             | ■ RPR (Health) = 32   |
| ■ Serious Medical Treatment = 7                 | ■ Safeguarding = 1  |

Chilcott, Rachel  
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- **Mental Capacity Training**

The following graph demonstrates overall compliance by staff group, with a comparison of August 2023 and December 2023 to outline progress since the last report.

Whilst booking rates have increased in recent months, attendance rates are variable on the day, which is likely due to ongoing clinical pressures and staffing issues.



▪ **Additional training provision**

MCA Practitioner led training

Training has been the primary focus of this quarter and expansive work has been done. This is reflected in the figures with a fivefold increase in the number of training sessions delivered last quarter.

A new training strategy has been developed that covers the 2024-2025 vision. Training has been developed in multiple formats to meet the variety of needs across the health board, from short ward-based sessions to half day detailed specialist content. Work this quarter has required the development of 13 different training packages & presentations which can now be used and adapted for future training as needed. Data collection and feedback mechanisms have also been developed and digitised, and the team has successfully gathered quantitative & qualitative data for monthly, quarterly, and annual reporting.

The monthly ‘Level 2 MCA’ training offer was redeveloped and delivered this quarter with plans to deliver 4 times during Mandatory February. Due to consistently poor attendance at this monthly training, a new 7-minute briefing has been developed, recognising the need to be creative with training formats to try and capture more staff. This covers the 5 Key Principles of the MCA and introduces the new team to ward staff.

Feedback gathered from UHB staff mirrors national research into barriers to lawful application of the MCA and identifies a deficit in practical application of the act, rather than in mandatory training attendance or theoretical knowledge. The practitioners have therefore developed a new half-day session ‘*Practical Application of the MCA - How to Assess & Support Decision Making*’ which is being piloted in January. This training introduces a ‘*Preparing for MCA Checklist*’ for staff to use both as a practical guide & as evidence of their adherence to the legislative requirements when planning and carrying out an MCA.

A large number of the training courses this quarter have been bespoke where training resources and sessions are catered to the requesting team. This has been a good opportunity whilst the team are newly developing, to create resources and gain feedback from attending staff about their perception of training need.

Highlights of training activity this quarter include:

- Rollout of the 7-minute briefings across 4 hospital sites to 97 staff
- Creation & delivery of the first Level 3 Safeguarding training on MCA in a Safeguarding Context
- Delivering training to 85 GP trainees on the role of the MCA in Safeguarding the Elderly
- Delivering training to 63 Cardiff University 3<sup>rd</sup> year nursing students on MCA & Discharge
- Presenting nationally to colleagues at the Dementia AHP Network Forum
- 100% of quantitative feedback has been positive with the only response that is not 100% (89%) relating to staff confidence rather than training content

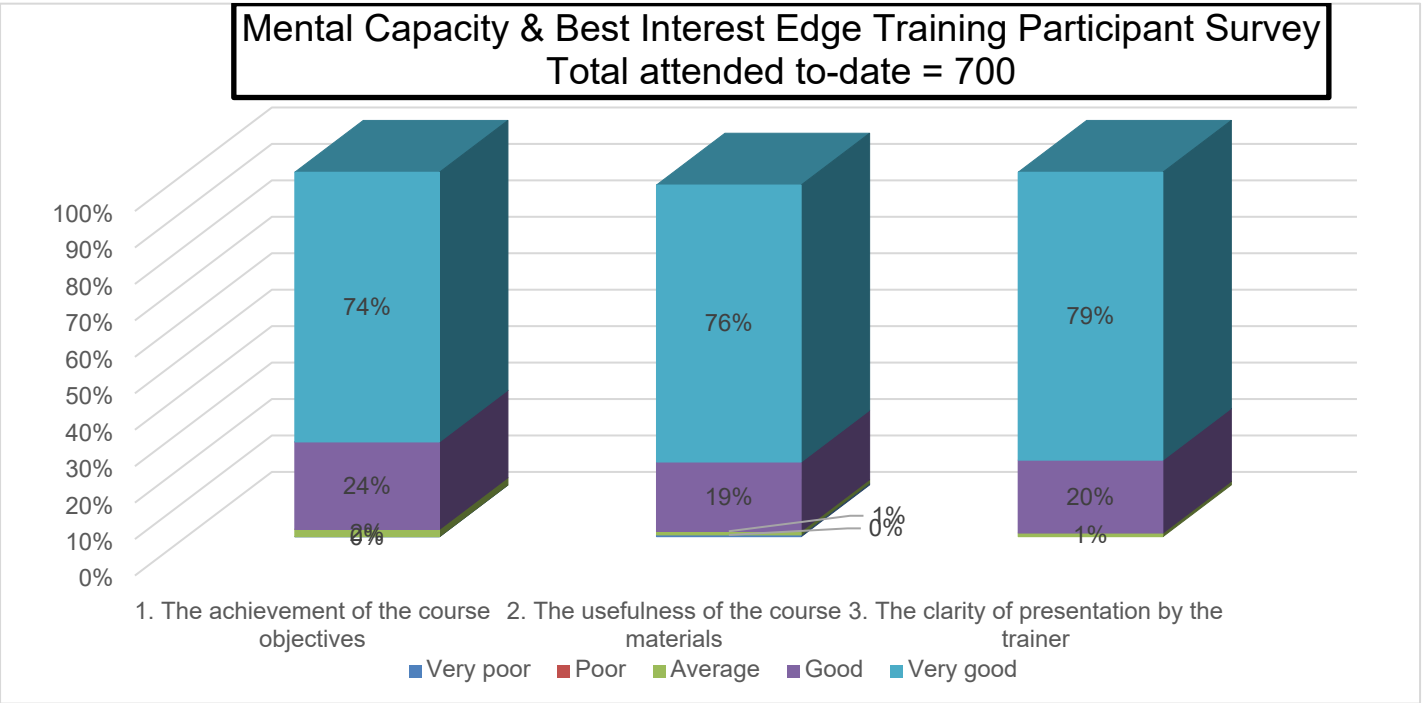
Mental Capacity and Best Interests Training (Edge Training)

This training continues to be well received by staff and was extended until March 2024. It is anticipated that further sessions will be made available during the next quarter

The table below provides data relating to feedback on its perceived quality and usefulness. Attendance rates during the later sessions in April were lower than hoped and appear to have been impacted by some more senior



staff being required to cancel at short notice to co-ordinate preparations for the nursing strikes but attendance figures have now recovered.



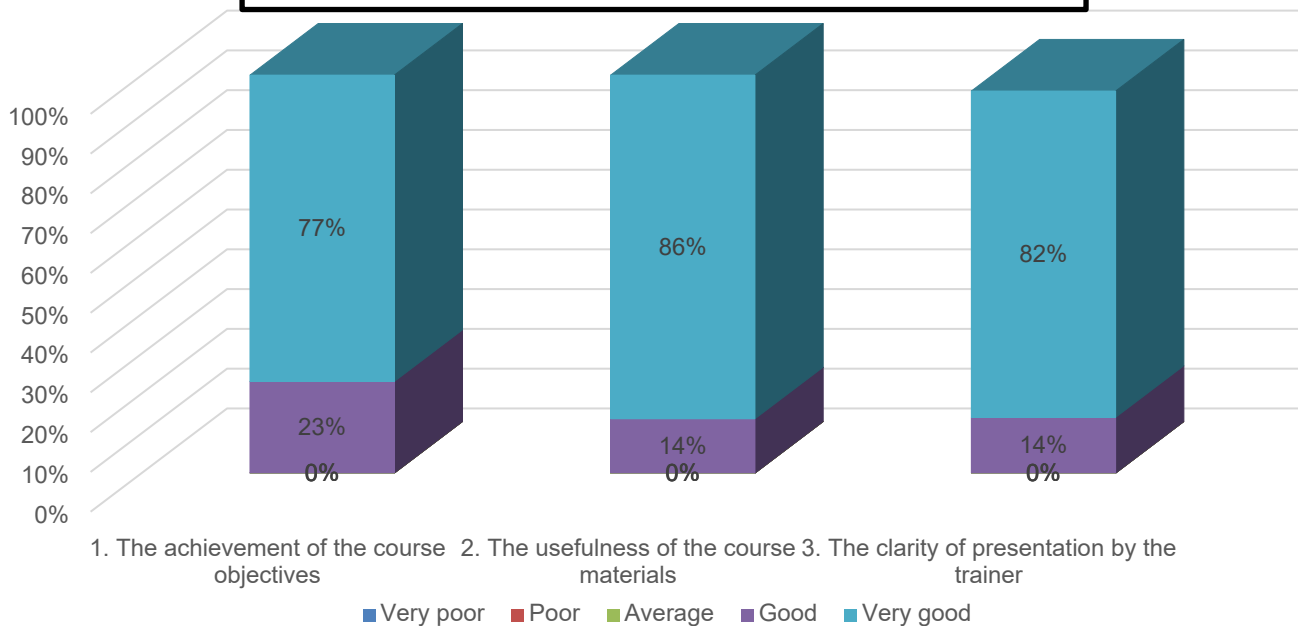
DoLS in Practice Training (Edge Training)

This training has recently been commissioned in order to help raise awareness around what amounts to a deprivation of liberty in order to ensure that we are effectively safeguarding our vulnerable patients and staff are completing DoLS referrals where appropriate.

All three sessions have now been held. We also commissioned a session in July specifically for those working with children and young people, in light of the fact that staff in these areas may not be confident in identifying when a deprivation of liberty is occurring.

Feedback from the first session is outlined in the table below:

### DoLs in Practice Edge Training Participant Survey Total attended to-date = 53



### Assessing Decision Making Capacity MSc module

Ten UHB staff have now undertaken the Level 7 MSc module 'Assessing Decision Making Capacity'. Evaluation forms will be circulated to those who have recently undertaken the module at the end of term. This academic year has seen five further members of staff commence the module, response to the expression of interest remains positive and a waiting list developed for the next module.

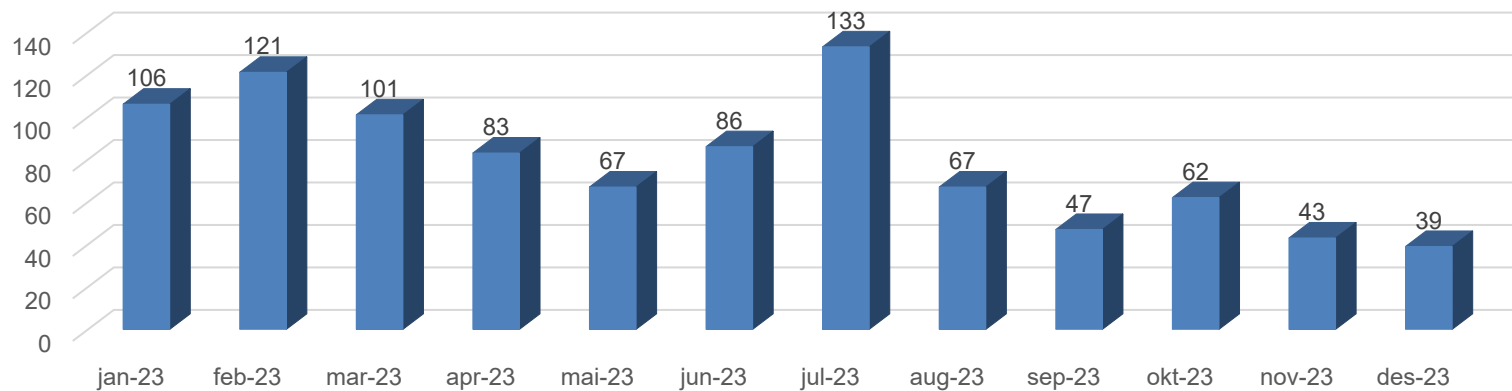
#### ▪ Deprivation of Liberty Safeguards Monitoring actions:

### Quarterly overview from Oct 2023 - Dec 2023

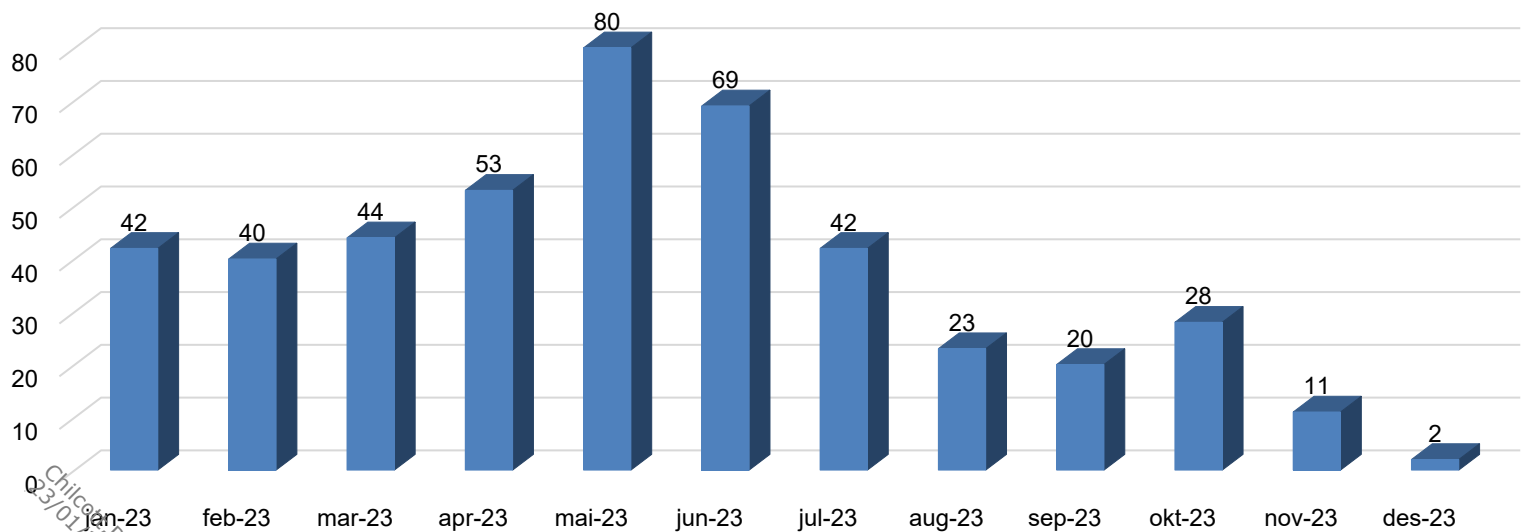
The below charts provide an overview of the last quarter (data provided by DoLs Team, Vale Local Authority).

Chart created by Rachel  
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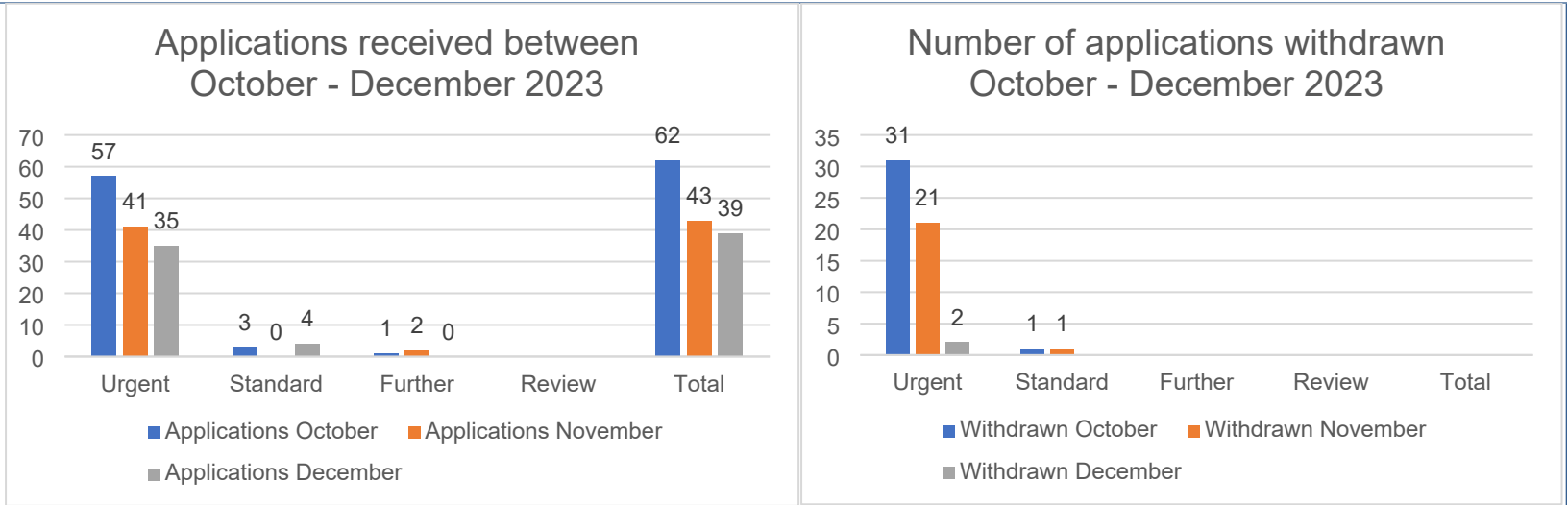
Number of **applications** by month  
Jan 23- Dec 23  
Total - 955



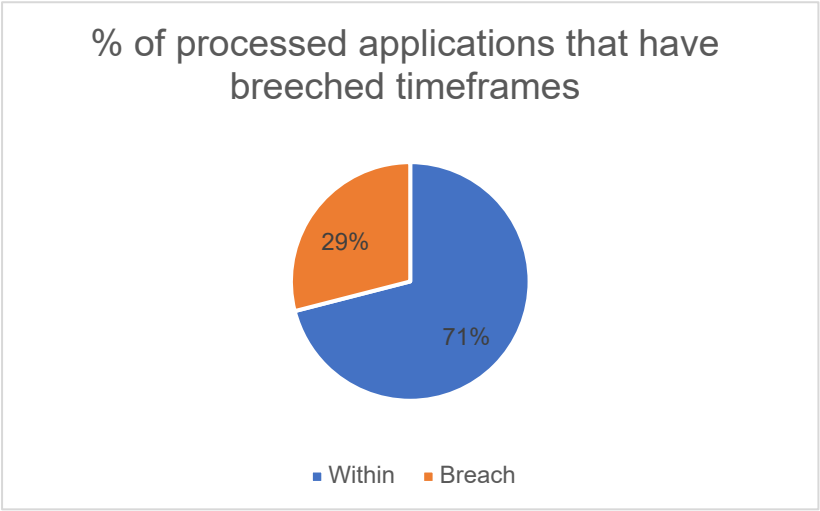
Number **assessed** by month  
Jan 23- Dec 23  
Total - 454



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The table below demonstrates 71% of applications were within the timeframe and 29% have breached for the last quarter (Oct - Dec 2023). This is an improvement upon Jul – Sept 2023 figures, when 32% of applications breached.



As mentioned in previous papers, breaches continue to occur due to insufficient resources to complete the assessments within the required timeframe. Whilst the agreed additional funding continues to have a positive effect, there still appears to be continued room for improvement.

Collaborative workshops have been held, which identified opportunities to improve the current process whilst recognising the growing demand on the service. As a result, a schedule of work has been agreed which will include:

- Development of a memorandum of understanding between the DOLs consortia members i.e., Health Board, Cardiff Local Authority and Vale Local Authority.
- Immediate review of re - assessment requirement e.g., if a patient is transferred to another ward
- Scoping of a digital system to provide an agreed dataset.
- Implementation of an alert system for standard authorisation delays to prevent the unlawful deprivation of patient's liberty.

In addition to the significant training and development work, the two Mental Capacity Specialist Practitioners are progressing a comprehensive work programme.

Highlights this quarter include:

- Completion of a large scoping audit that includes data from 5 hospital sites and 5 clinical boards, and assesses staff perspective, patient perspective and medical records review for MCA compliance. Findings have been written up and will be presented at the upcoming Safeguarding Steering Group in January.
- Ensuring patient & public involvement through creation of a survey about experience of the MCA. This will be circulated imminently by Patient Experience.
- Currently in development an illustrated staff information leaflet to raise awareness of the role of NoK vs LPA following staff & patient feedback collected in the audit.
- Welcoming nursing spoke placement students, for which a detailed student pack was developed, and positive feedback has been received.

## **Consent to Examination and Treatment**

The Welsh Risk Pool's (WRP) All Wales Consent Group recently launched a Consent to Examination and Treatment E-learning package which is available to staff across Wales through ESR. The WRP are looking to mandate the training at Health Board level, it is important that the UHB raise awareness of the training package and encourage staff to undertake it, with the aim being that patient facing staff do the training at least once in each relevant professional revalidation cycle,

The WRP will be monitoring uptake of it through ESR to see how well it is being adopted and it is expected that it will be widely used in order to demonstrate commitment to strengthen consent practices across Wales, therefore reducing the risk of concerns and costly litigation. The training compliance along with the use of the EIDO leaflets will be some of the criteria used to assess UHB's indemnity risk by the Welsh risk pool. The Consent Lead is currently working with the Education, Culture and Organisational Development team to mandate this training at UHB.

There has been a poor uptake of attendance at face-to-face training, which is provided monthly, but bespoke training for large groups of staff within departments has been more popular and several sessions have been arranged. Consent training is to be advertised on UHB screen savers, pay slips, ESR and attendance of Consent Lead at Clinical Boards quality and safety meetings to promote both face to face and online training.

The All-Wales Consent and Treatment Group as part of its strategy has asked all Health Boards to undertake a peer review by senior clinicians in the following areas between 1<sup>st</sup> September 2023 and 31<sup>st</sup> December 2023

- Surgery and its sub specialities
- Interventional cardiology and radiology
- Dermatology
- Obstetrics and Gynaecology

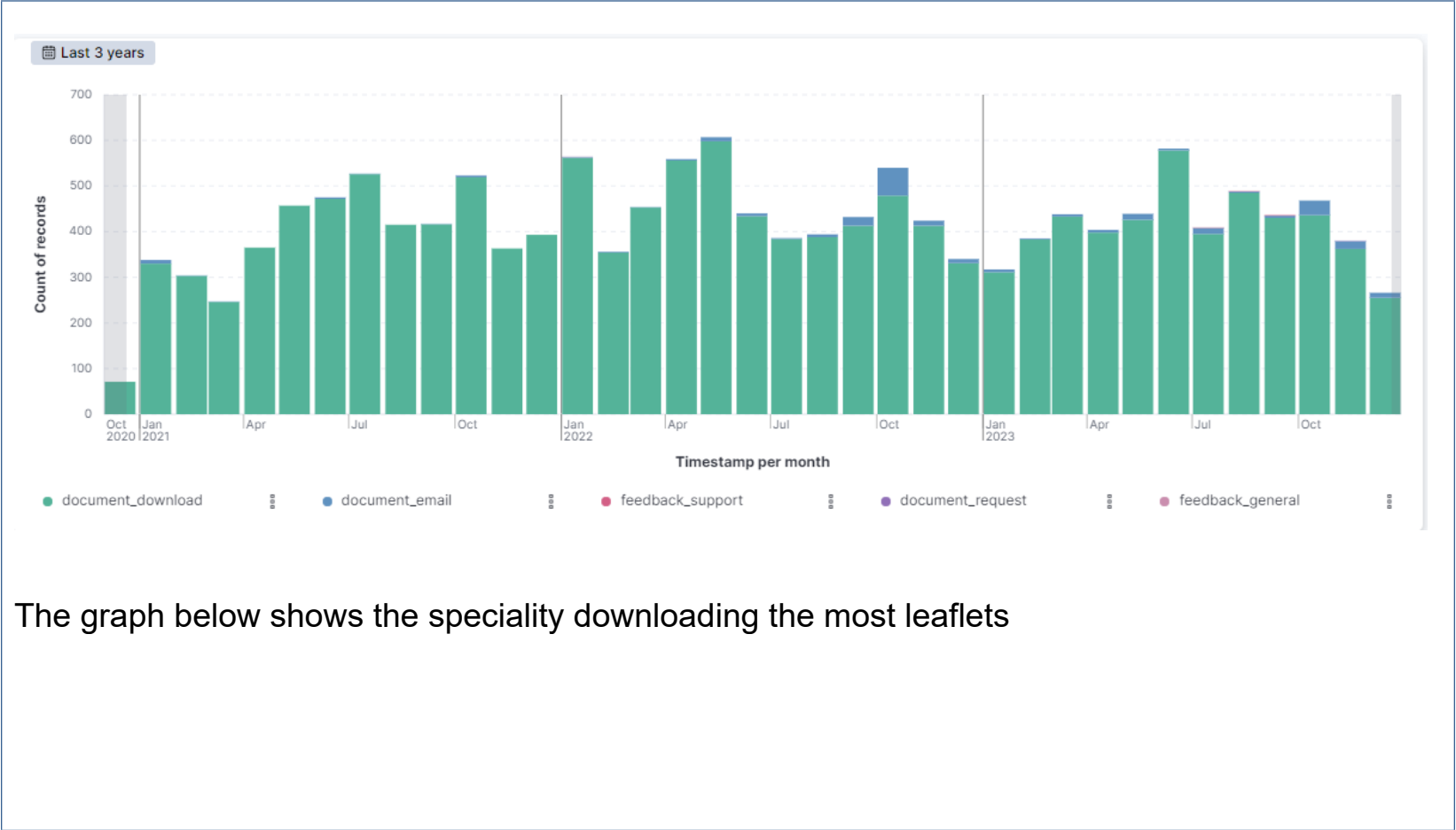
The results will inform the All-Wales Consent and Treatment Group, Welsh Risk Pool and UHB and identify any further actions which need to be undertaken to maintain/improve compliance of the current Consent process across Wales and the UHB. Despite a slow start, the audit has now reviewed over 172 sets of patients notes at UHB.

The UHB Consent to Examination and Treatment policy has been updated and the new version is available on the health board's intranet.

The new Consent Group for UHB has its first meeting scheduled for the 24th of January 2024, and this will allow the group to discuss relevant issues around the consent process and will enable members to update and feedback Consent issues to individual clinical boards and their teams. Initial agenda items will be to look at the development and guidance for producing procedure specific consent forms and local patient information leaflets where appropriate.

On reviewing the data from EIDO, the use of EIDO patient information leaflets across the organisation in the last two years has remained fairly unchanged. We must ensure that where EIDO leaflets are available, that they are used and only resort to the use of nationally recognized and locally produced information leaflets where they are not available

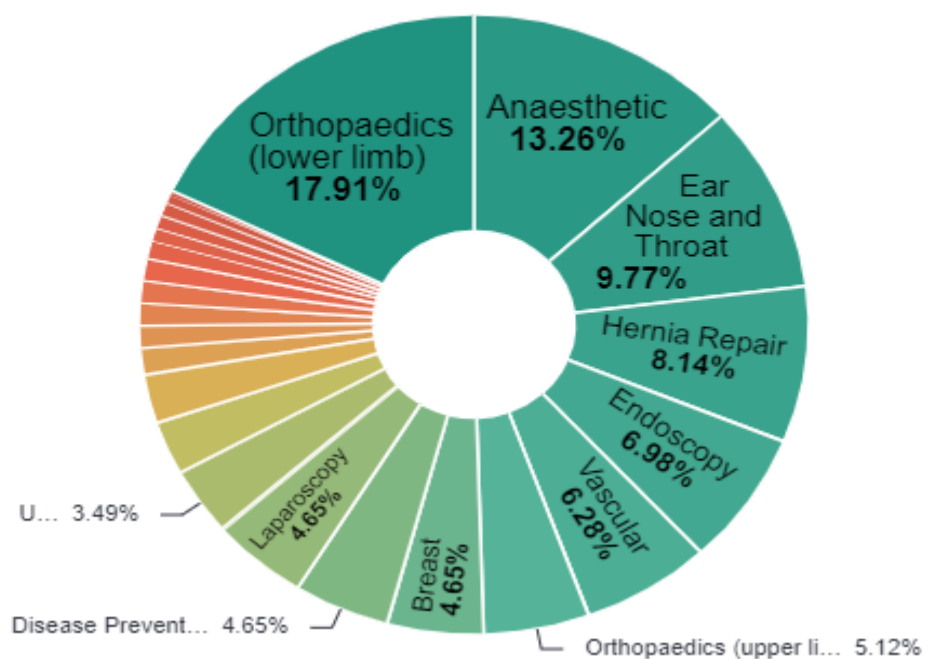
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The graph below shows the speciality downloading the most leaflets

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Downloads by specialty



As we can see from the below table Cardiff and Vale University Health Board are ranked low in the league table compared with other Health Boards in Wales, 1 November 2023-6 December 2023

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### Total Downloads by user

	User	Name	Downloads ▾
1.	ABMUHB	Swansea Bay University Healt...	11,027
2.	BCUHB	Betsi Cadwaladr University H...	10,638
3.	CWMHB	Cwm Taf Morgannwg Univers...	7,002
4.	HYWELHB	Hywel Dda Health Board	6,034
5.	ABUHB	Aneurin Bevan University He...	3,763
6.	CAVUHB	Cardiff and Vale University H...	3,303
7.	POWTHB	Powys Teaching Health Board	935
8.	PHW	Public Health Wales	6
9.	VCC	Velindre Cancer Centre	5


Following the report “A National Review of the Consent to Examination and Treatment Standards in NHS Wales” published May 2023 (see extract below) it clearly shows that Cardiff and Vale University Health Board was one of only two Health Boards across Wales identified as “Limited Assurance” Therefore there is still a lot of work required to improve, Cardiff and Vale University Health Boards standing and attain at least “Reasonable Assurance”

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## Overall Assurance Ratings


Six organisations achieved an assurance rating of Reasonable Assurance.

- Betsi Cadwaladr University Health Board
- Cwm Taf Morgannwg University Health Board
- Hywel Dda University Health Board
- Powys Teaching Health Board
- Swansea Bay University Health Board
- Velindre University NHS Trust

REASONABLE ASSURANCE		The organisation can take <b>reasonable assurance</b> that arrangements to secure governance, risk management and internal control in relation to Consent to Treatment are suitably planned and applied effectively. Some matters require management attention in control design or compliance with low to moderate impact on residual risk exposure until resolved.
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Two organisations was determined to have an assurance rating if Limited Assurance/

- Aneurin Bevan University Health Board
- Cardiff and Vale University Health Board

LIMITED ASSURANCE		The organisation can take <b>limited assurance</b> that arrangements to secure governance, risk management and internal control in relation to Consent to Treatment are suitably planned and applied effectively. More significant matters require management attention with moderate impact on residual risk exposure until resolved.
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They have identified seven recommendations, which forms Cardiff and Vales's action plan

- Health Bodies complete reviews and ratification of the organisational policy on consent to examination & treatment through local governance processes and have effective procedures for responding to amendments to the national model policy when published.
- Organisations should develop and implement a formally approved procedure setting out the governance process in relation to the development of local Procedure Specific Consent Forms.
- Organisations should develop and implement a formally approved procedure setting out the governance process in relation to the development of local patient information leaflets.
- Health Bodies should hold a database of all patient information leaflets used within the consent process. The Welsh Risk Pool will aim to develop a model process for this in 2023/24.
- Organisations should establish a process to comply with the Welsh Risk Pool requirements for the use of local patient information leaflets (where an organisation wishes to deviate from the use of an EIDO patient information leaflet, or where no EIDO leaflet or compliant alternative is available, this needs to be notified via email to [consenttreatment@wales.nhs.uk](mailto:consenttreatment@wales.nhs.uk))
- Organisations should establish a peer review of their consent process and records, utilising the peer review tool developed on an All-Wales basis. Health Bodies should hold an action plan to monitor and address any identified issues in the consent process and feedback following peer-reviews should be provided to both individuals and across the organisation to help coordinate improvements.
- Health Bodies should implement a requirement for all clinicians who take consent from patients to complete a recognised training programme and have a system for identifying and tracking compliance. Training could be either via the national e-learning consent training package or an approved in-house face to face training session.

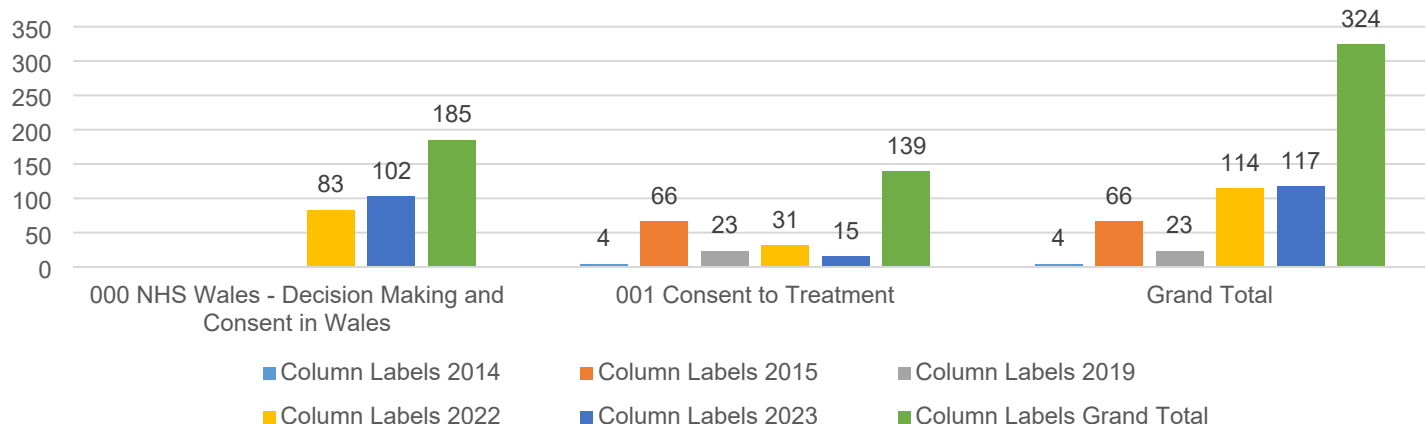
Action Plan:



Consent review -  
Action Plan Feb 202.

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### Current Training stats for Consent for Cardiff and Vale



The Mental Health and Capacity Legislation Committee is requested to **NOTE** the contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators.

#### Link to Strategic Objectives of Shaping our Future Wellbeing:

Please tick as relevant

1. Reduce health inequalities	✓	6. Have a planned care system where demand and capacity are in balance	
2. Deliver outcomes that matter to people		7. Be a great place to work and learn	
3. All take responsibility for improving our health and wellbeing		8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	✓
4. Offer services that deliver the population health our citizens are entitled to expect	✓	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation, and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention

Long term

Integration

✓

Collaboration

✓

Involvement

Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Safety: No

Financial: No

Workforce: Yes

Risk of inability to recruit to posts

Legal: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Reputational: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Socio Economic: No

Equality and Health: No

Decarbonisation: No

Approval/Scrutiny Route:

Committee/Group/Exec

Date:

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Report Title:	Mental Health Act Monitoring Exception Report			Agenda Item no.	9.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	X	Meeting Date:	30 Januray 2024
		Private			
Status <i>(please tick one only):</i>	Assurance	X	Approval	Information	
Lead Executive:	Interim Chief Operating Officer				
Report Author (Title):	Mental Health Clinical Board Director of Opertations				

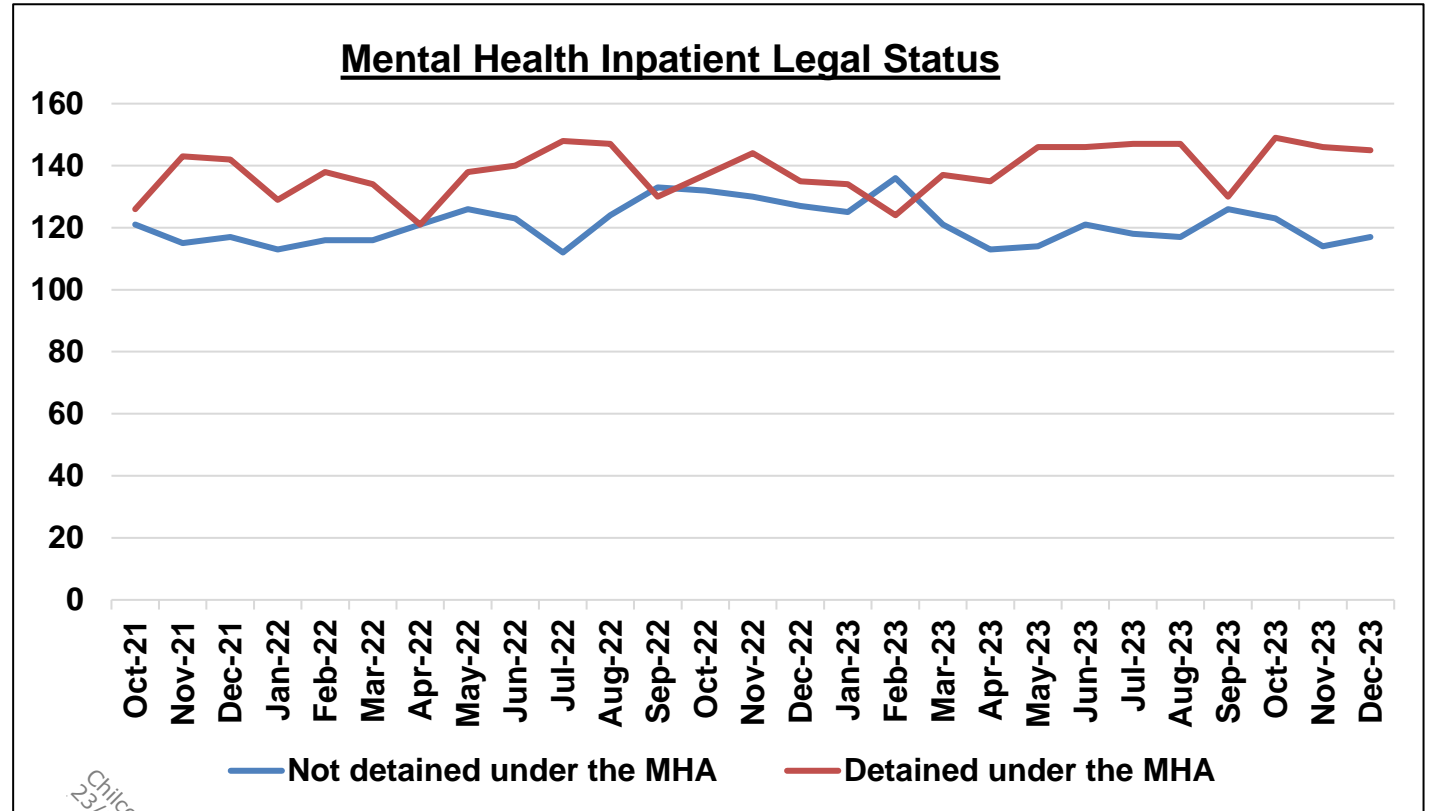
Main Report

Background and current situation:

This report provides the Committee with further information relating to wider issues of the Mental Health Act (MHA). Any exceptions highlighted in the MHA Monitoring report are intended to raise the Committee’s awareness of matters relating to the functions of hospital managers and give assurance that the care and treatment of patients detained by Cardiff and Vale University Health Board and those subject to a community treatment order is only as the MHA allows.

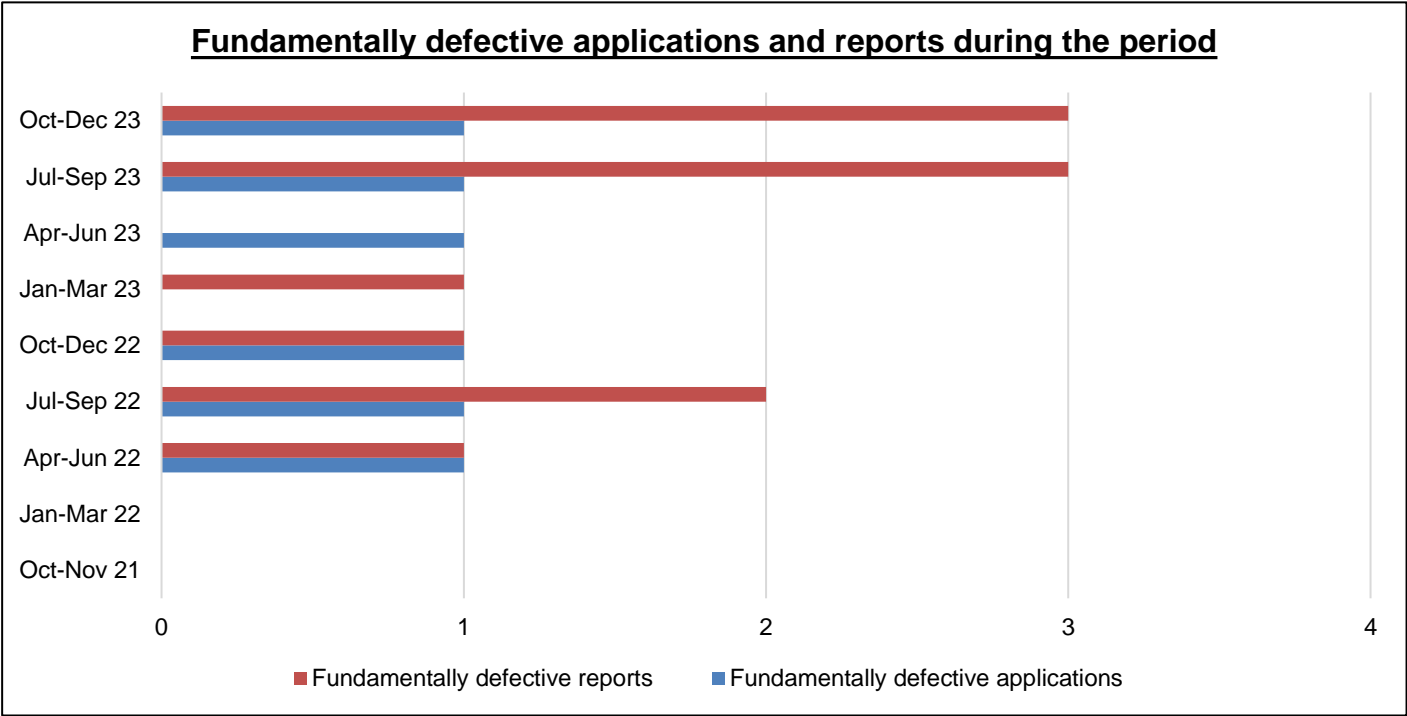
Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

Use of the MHA



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**Fundamentally defective applications and reports**



During the quarter there was one fundamentally defective application.

P was taken to UHW from HMP Cardiff for physical issues and while there, their mental health deteriorated and a MHA assessment was called. P was detained on a Section 2 and transferred to PICU in HYC with 4 prison guards. This was fundamentally defective as a serving prisoner can't be detained under a civil section (Section 2/3/4). If hospital treatment is needed, there is a formal process via the Ministry of Justice, for them to issue a Section 47/49 transfer warrant. Alder Ward recognised the mistake and after discussion with the MHA Manager, the decision was made for P's responsible clinician to discharge them from Section 2 and they were transferred back to prison while awaiting the transfer warrant to be issued for Cwm Taff, as P was theirs.

During the quarter there were three fundamentally defective reports.

P was in UHW and a doctor completed a Section 5(2) form and scanned a copy to the shift coordinator however, the doctor hadn't signed the form and just typed their name but in Wales we require a wet signature on detention paperwork. The shift coordinator tried to contact the ward and doctor for them to sign and rescan but they were unable to get through. The ward and doctor were informed the following day that P wasn't being held on a Section 5(2) and if they felt one was necessary, they would need to contact another doctor to complete one.

P was in UHW and a doctor completed a Section 5(2) form and shortly after a MHA assessment was completed where the patient was detained under Section 2. All paperwork was sent to MHA office and shift coordinator and when MHA office scrutinised the documents, they found the Section 5(2) was completed on an English form and therefore fundamentally defective. MHA office informed the ward and doctor but the patient was already on a Section 2, which was completed correctly.

P was in HYC and a doctor completed a Section 5(2) form and scanned a copy to the shift coordinator but the doctor hadn't signed or dated the form therefore it was fundamentally defective. Unfortunately, the shift coordinator hadn't picked this up before accepting it but the MHA office noticed this when scrutinizing the documents however, P had since been detained on a Section 2. The ward and doctor were informed the 5(2) was fundamentally defective.



**Invalid use of the MHA**

During the quarter there was one invalid use of the MHA.

P was detained under a Section 2 and had had a MHA assessment to convert to a Section 3 however, the AMHP didn't feel the patient met the criteria for Section 3 so didn't proceed with the application. The AMHP told the patient they were no longer detained under Section 2 which was incorrect as only the responsible clinician (in this scenario) can discharge a patient from detention. The responsible clinician completed a Section 5(2) form which was invalid as the Section 2 was still in place. The responsible clinician was informed and they arranged another MHA assessment, where P was detained under Section 3.

**Section 136 A&E**

There could be instances when treatment under a 136 is related to the mental disorder but the patient is not fit for a mental health act assessment within the 24/36-hour period causing the 136 to lapse, for example,

*Patient has taken an overdose which is related to their mental disorder. Needs to go to A&E for physical treatment, therefore the clock starts ticking when they arrive in A&E. Patient receiving physical treatment beyond the 24/36-hour period. 136 has lapsed with no mental health act assessment.*

In all instances where the 136 has lapsed due to the patient not being fit for a mental health act assessment, a DATIX will be completed.

**Section 136**

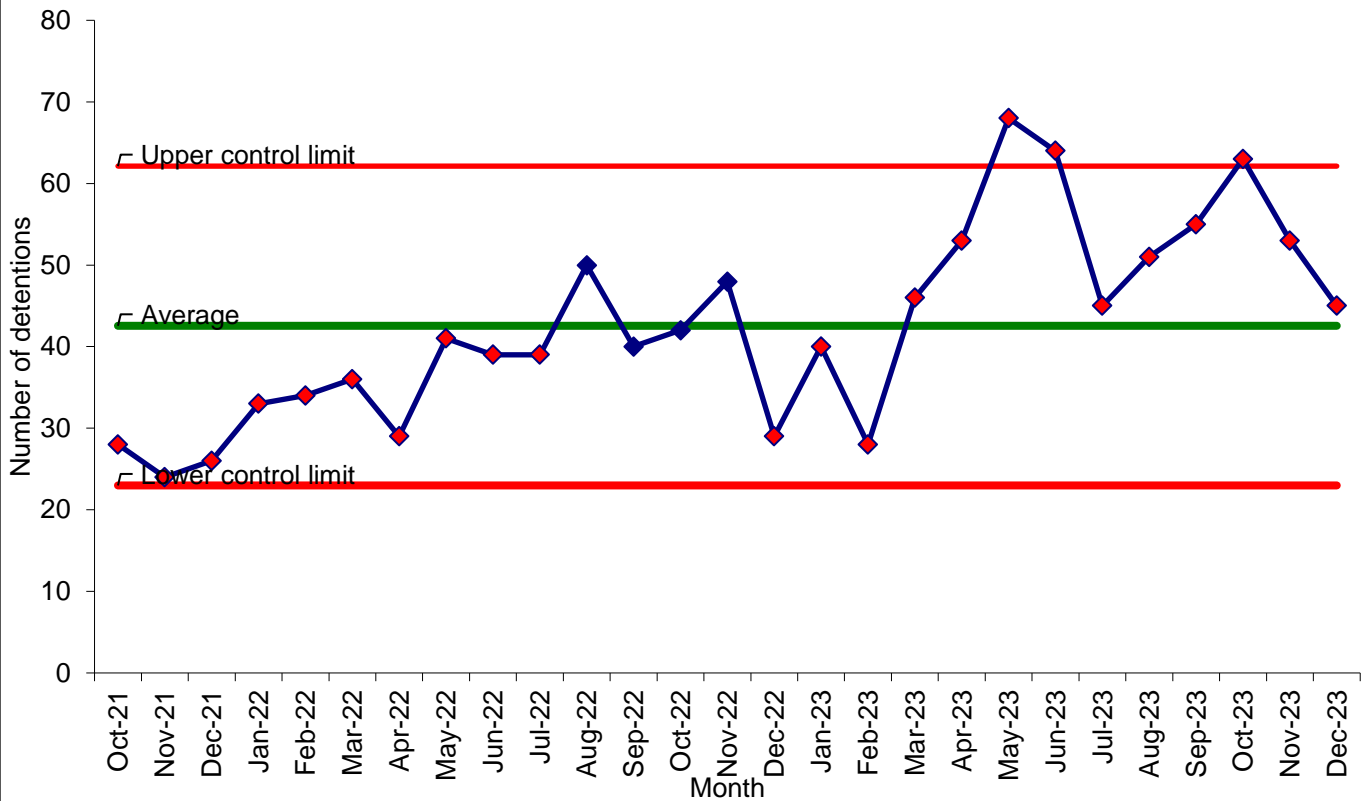
During the period, the use of section 136 has increased.

It was noted that 80.1% of individuals assessed were not admitted to hospital, with 55.3% being discharged to community services and 24.8% were discharged with no follow up. Overall during the period 19.2% of patients were admitted to hospital following a 136 assessment which is higher than the previous quarter at 13.9%. One patient's 136 lapsed with no assessment taking place.

Period	% not admitted to hospital
October – December 2023	80.1%
July – September 2023	83.5%
April – June 2023	80.4%
January – March 2023	71.1%
October – December 2022	73.9%
July – September 2022	69.0%
April – June 2022	71.5%
January – March 2022	63.4%
October – December 2021	68.0%

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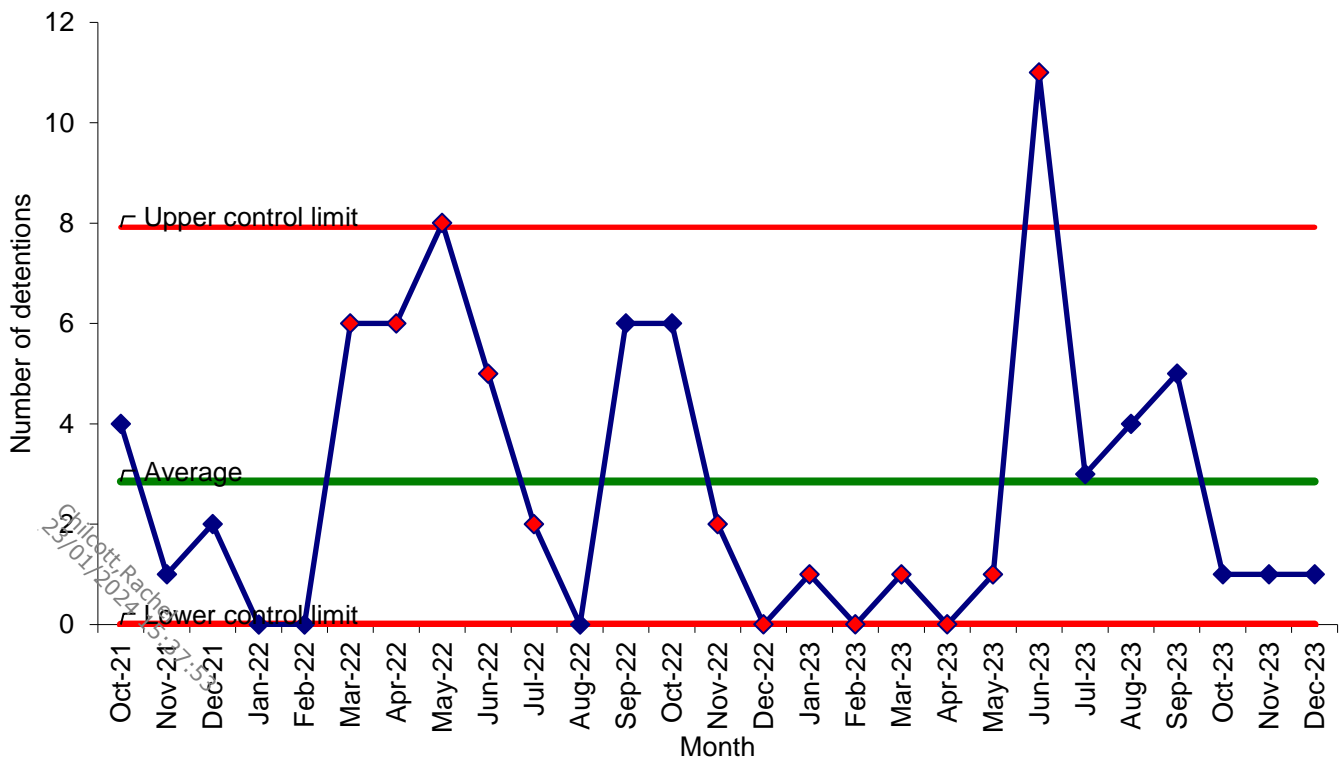
### Use of Section 136 where the assessment took place in hospital



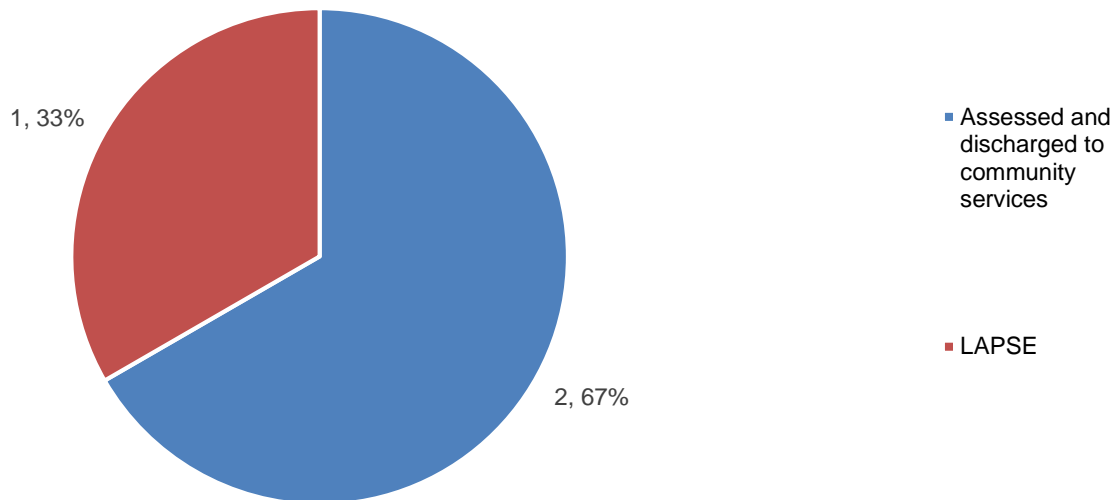
### Section 136 - CAMHS

The number of those under 18 assessed under section 136 has decreased from 12 in the previous quarter to 3 in this quarter. None of these were repeat presentations.

### Use of Section 136 where the person is under the age of 18 years old



### Outcome of CAMHS Section 136 assessments



### Mental Health Review Tribunal for Wales (MHRT)

The Welsh Tribunals President, Sir Gary Hickinbottom visited HYC to see how Tribunals function on the ground and the facilities we have for hearings, and to discuss parking. Dan Crossland, Ceri Phillips and Dave Seward showed Sir Gary around and discussed some of the issues the MHA office were experiencing with the Tribunal overall. It was very informative and a successful meeting in which we were all in an agreement as to the way forward with parking and some other issues will hopefully be addressed in the new year.

### Development Sessions

The MHA office continues to run the below awareness sessions available to all staff within the Health Board:

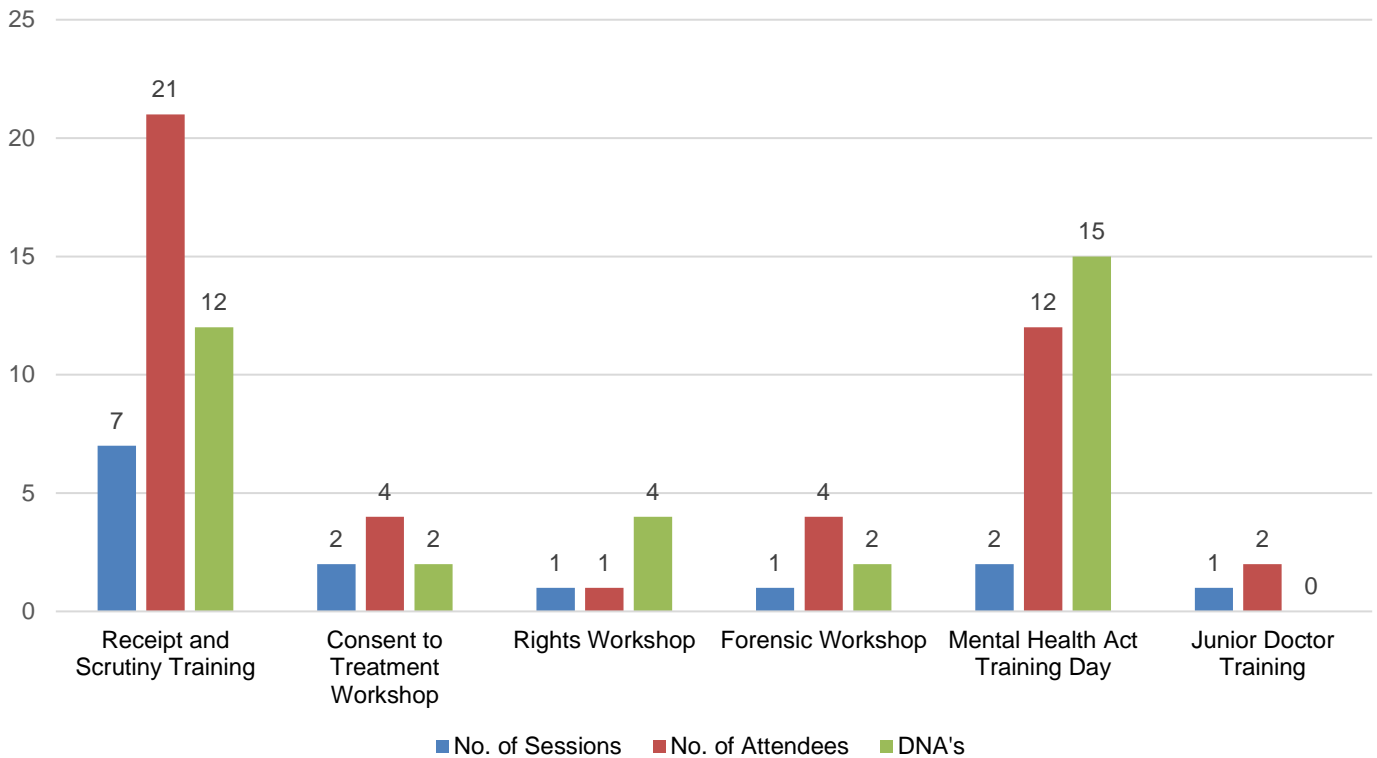
- Bi monthly MHA training day
- Quarterly consent to treatment, rights and forensic workshops
- Yearly refresher receipt and scrutiny training for all shift coordinators

We also continue to support the below training programmes as and when required:

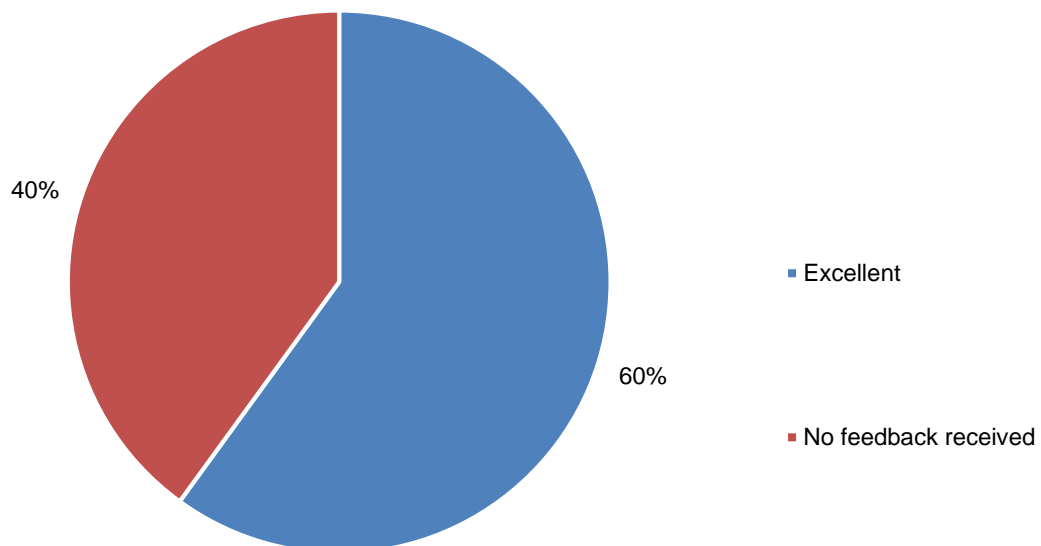
- Nurse foundation programme
- Junior Doctor's MHA inductions
- AMHP programme

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### Training Session October - December 2023



### Training Feedback October - December 2023



### Audits

The MHA office continue to audit all the wards and CMHT's within the UHB. This is to ensure compliance with the MHA and best practices are maintained. If any issues are found during the audit we will follow up with an e-mail to the ward manager and/or responsible clinician confirming what is needed to rectify the issue and re-audit within 4-6 weeks.

## **The Mental Health Clinical Board continues to take the following approach:**

### **Fundamentally defective applications**

Continue to ensure effective communication between the Local Authority and the UHB and promote MHA training across the UHB.

### **Fundamentally defective reports**

Continue to ensure effective communication across the UHB and promote MHA training.

### **Invalid use of the MHA**

Continue to ensure effective communication between the Local Authority and the UHB and promote MHA training across the UHB.

### **Section 136**

Continue to monitor with colleagues in South Wales Police and ensure any incidents related to an assessment not being completed within the 24/36-hour period due to physical health issues are reported accordingly.

### **Section 136 – CAMHS**

Continue to monitor and report accordingly ensuring that at least one of the people involved in the child's formal assessment (i.e. one of the two registered medical practitioners or the approved mental health professional) is an experienced specialist CAMHS practitioner wherever possible.

### **Mental Health Review Tribunal**

Continue to work with the MHRT for Wales to find suitable resolutions to any issues, to ensure that appropriate action is taken to protect the patients' right to a fair hearing and ensure any incidents are reported accordingly.

### **Development sessions**

Continue to develop a robust training rota to ensure that development sessions in relation to all areas of the MHA are available and easily accessible. This will be provided by creating an MHA e-learning module.

### **Audits**

Continue to audit wards and CMHT's, while providing support and guidance on maintaining compliance with the MHA and best practices.

## **Recommendation:**

The Committee is requested to:

- a) NOTE the approach taken by the Mental Health Clinical Board to ensure compliance with the appropriate Mental Health legislation, as set out in the report.

## **Link to Strategic Objectives of Shaping our Future Wellbeing:**

*Please tick as relevant*

1. Reduce health inequalities	X	6. Have a planned care system where demand and capacity are in balance	X
2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn	X
3. All take responsibility for improving our health and wellbeing	X	8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X

4. Offer services that deliver the population health our citizens are entitled to expect	X	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	X
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	X

#### Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
------------	---	-----------	---	-------------	---	---------------	---	-------------	---

#### Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: Yes/No

No

Safety: Yes/No

Yes – there is a potential risk that if a 136 lapses with no assessment being completed the patient will be allowed to leave and could harm themselves or others.

Financial: Yes/No

No

Workforce: Yes/No

No

Legal: Yes/No

Yes – communication between the UHB, Local Authority and South Wales Police needs to continue to be monitored to ensure all risks regarding detaining someone without authority are mitigated.

Reputational: Yes/No

No

Socio Economic: Yes/No

No

Equality and Health: Yes/No

No

Decarbonisation: Yes/No

No

#### Approval/Scrutiny Route:

Committee/Group/Exec

Date:



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NHS  
WALES  
GIG  
CYMRU

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

**Report to the  
Mental Health Legislation and Mental Capacity Act Committee  
on the use of The Mental Health Act, 1983**

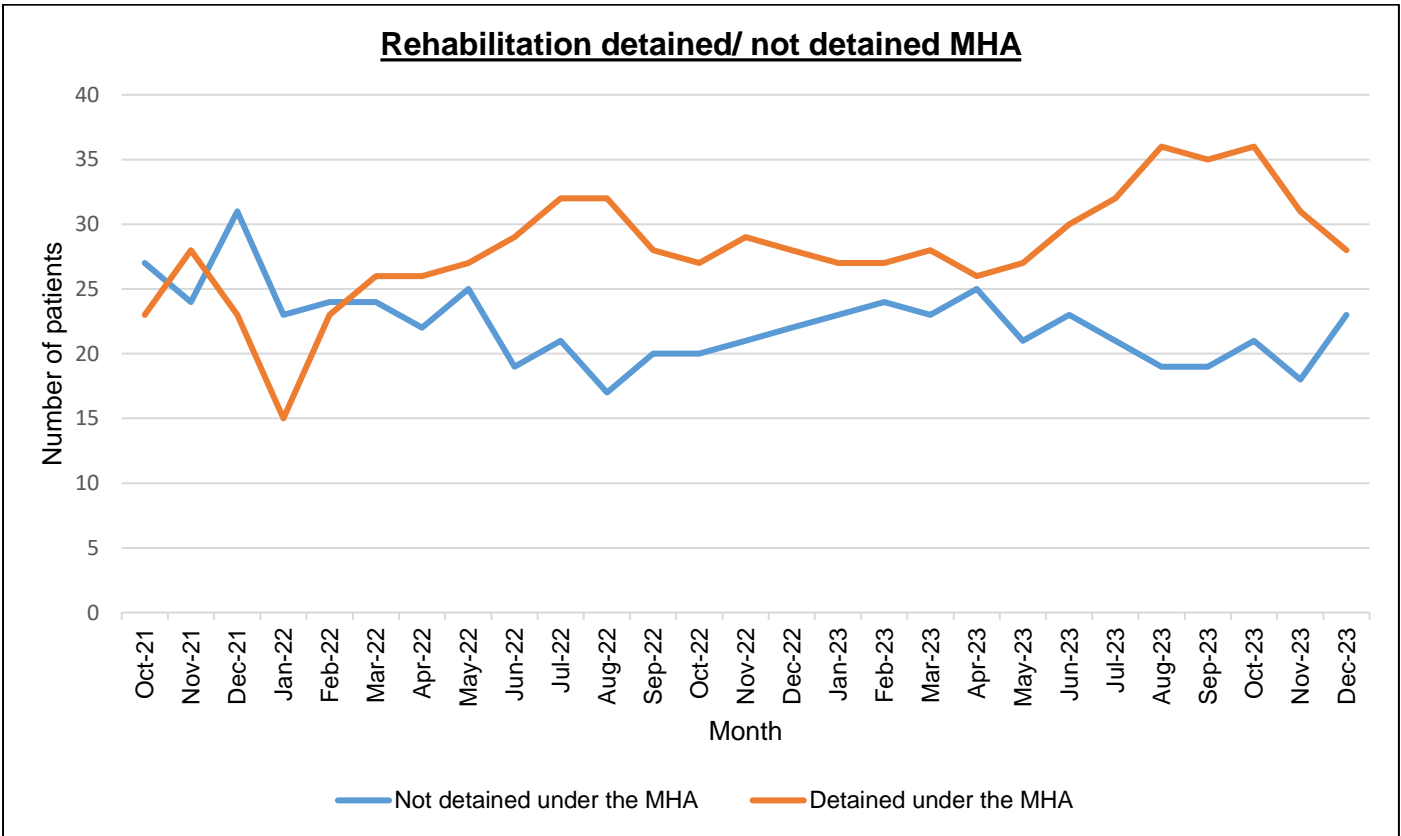
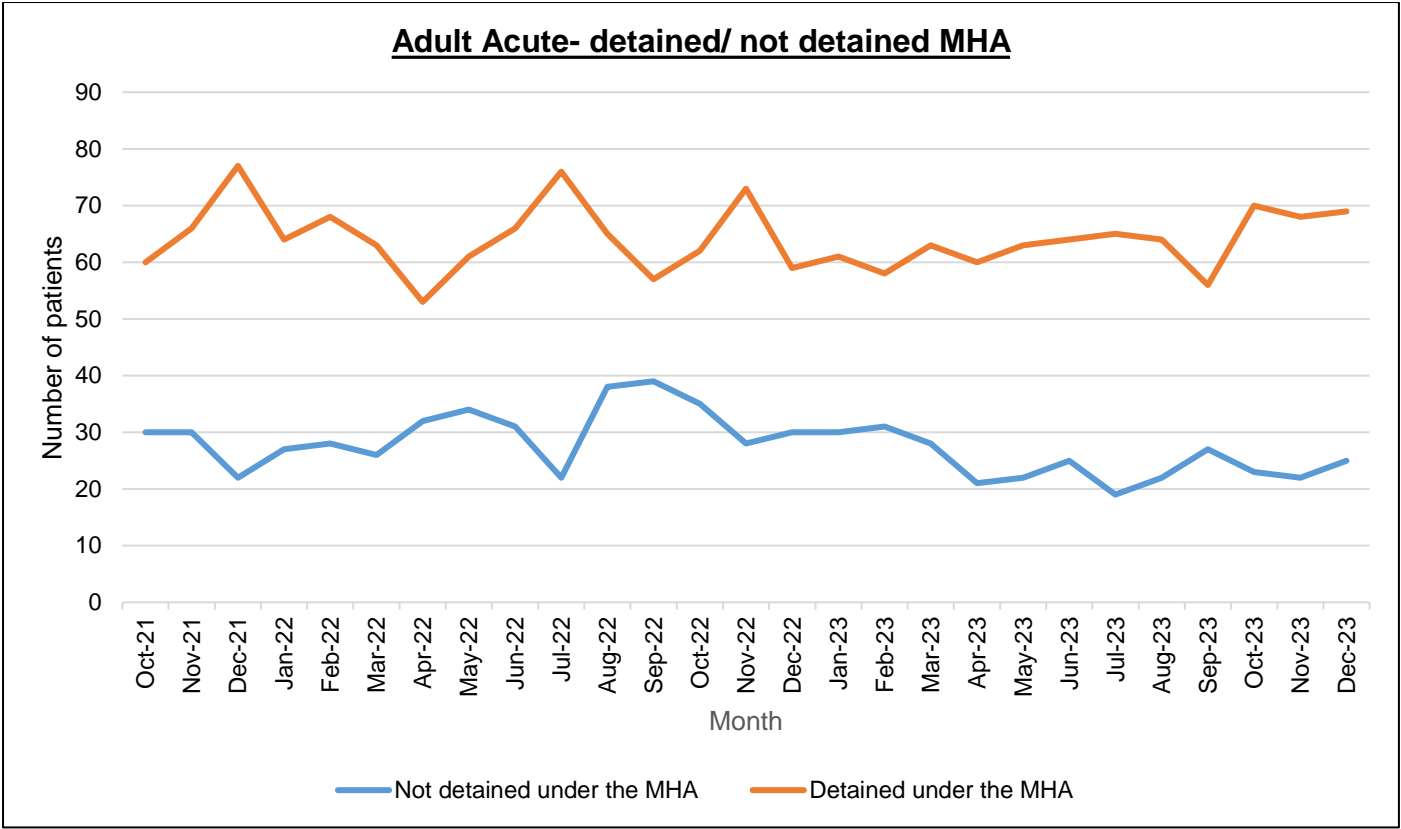
**October- December 2023**

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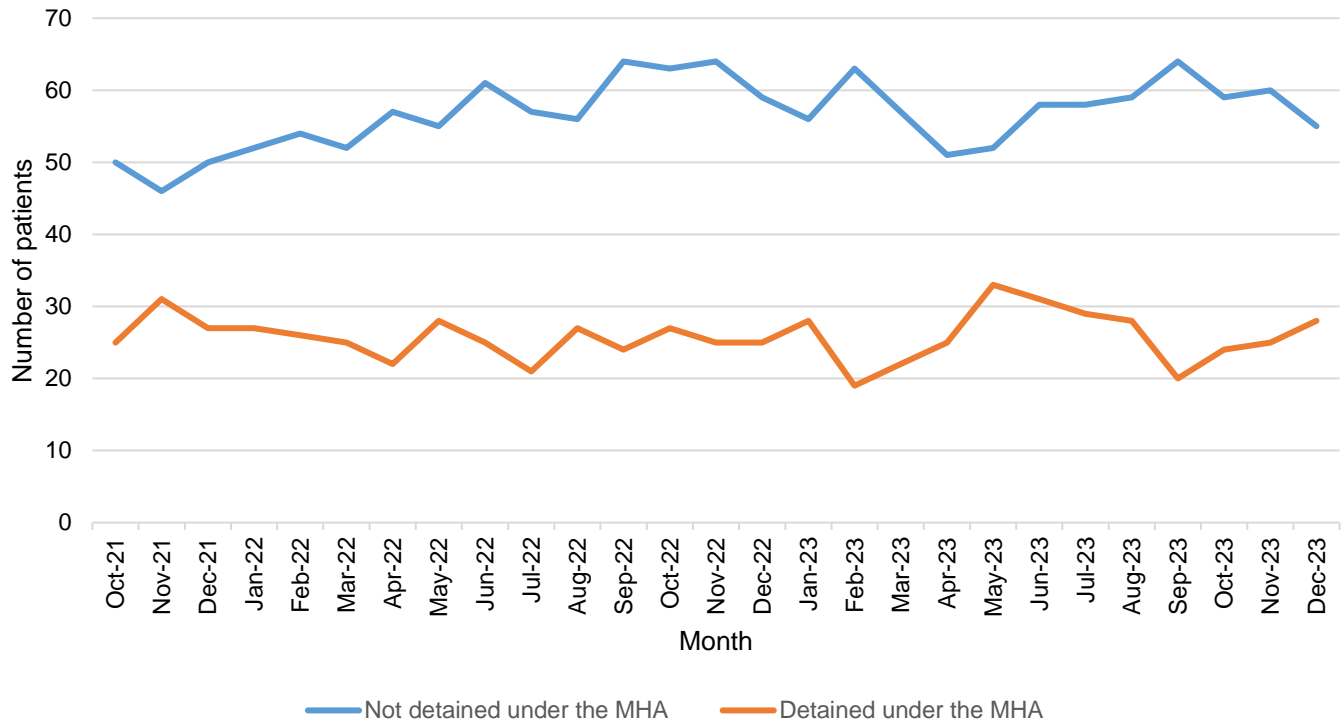
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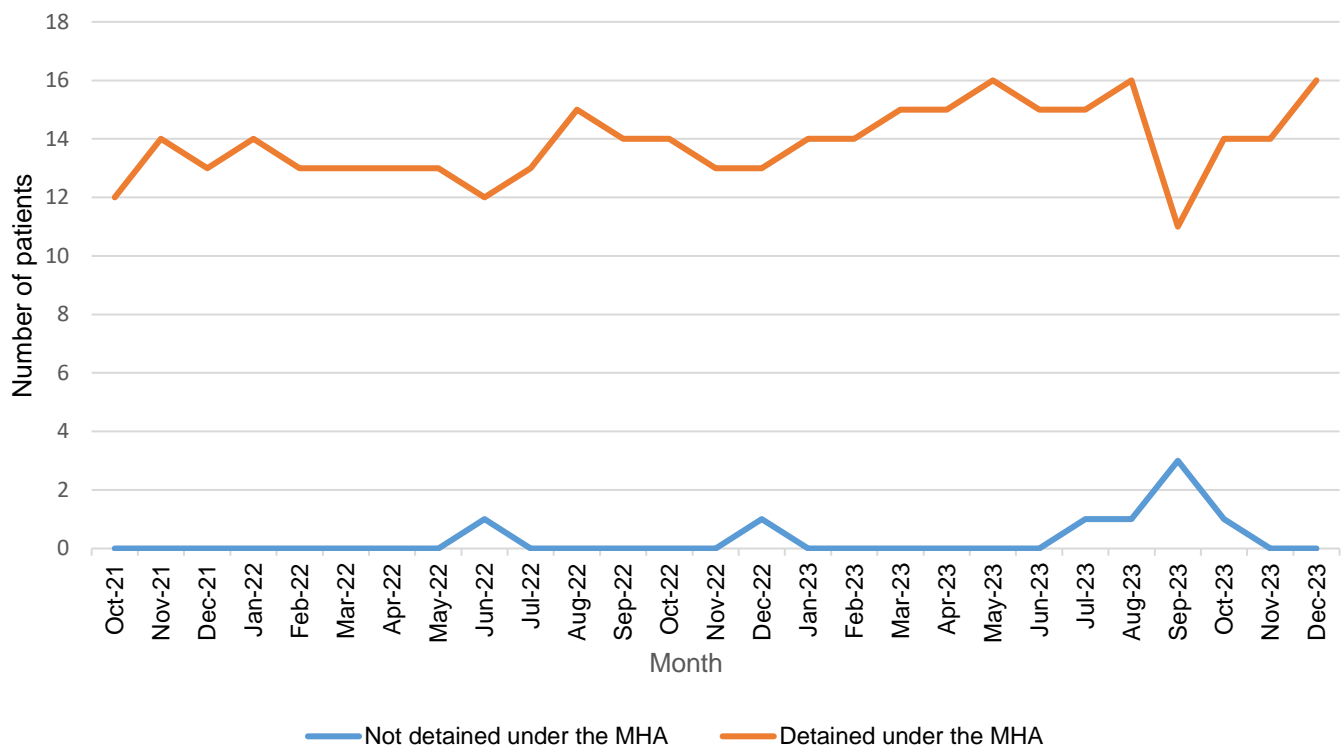


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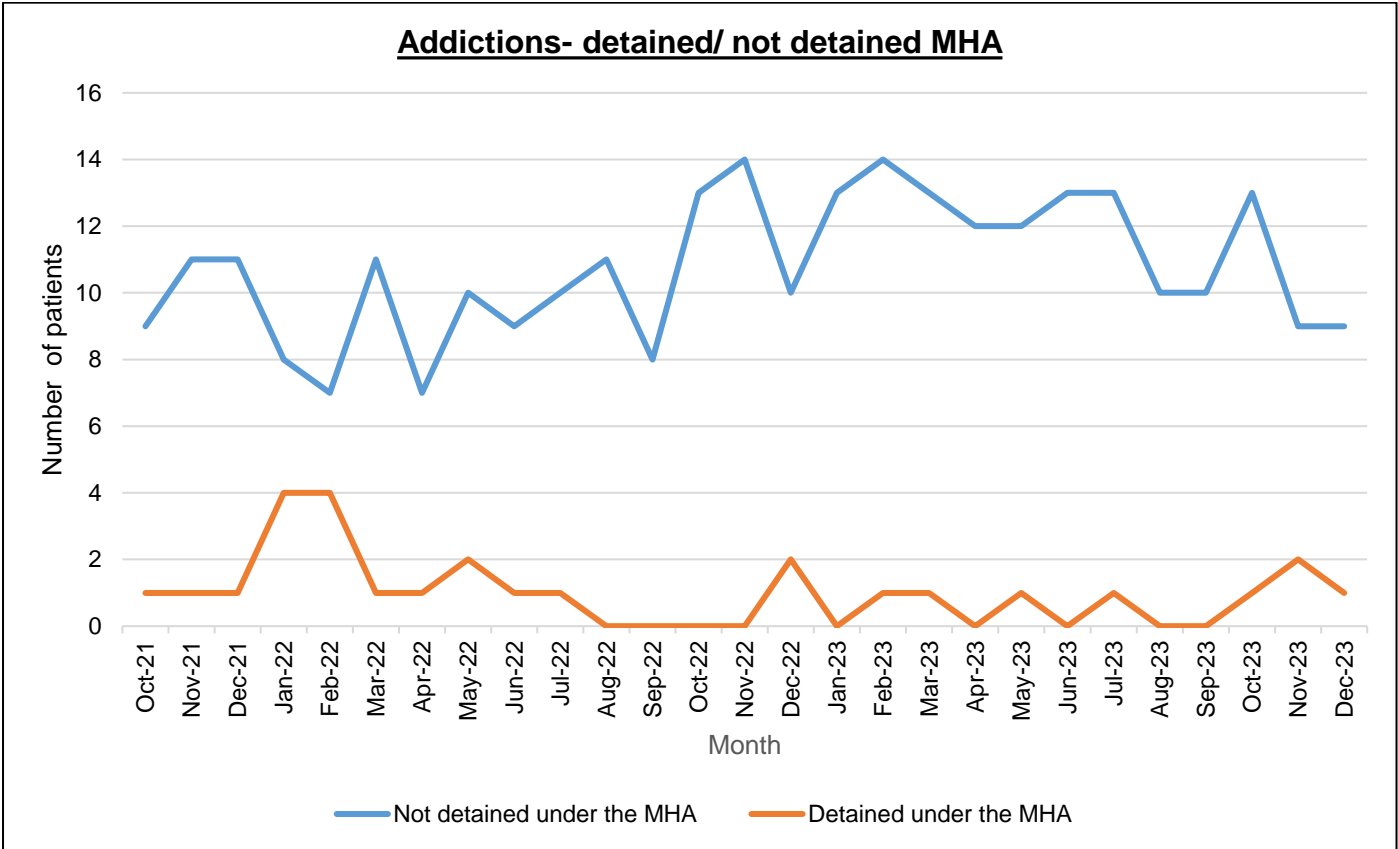
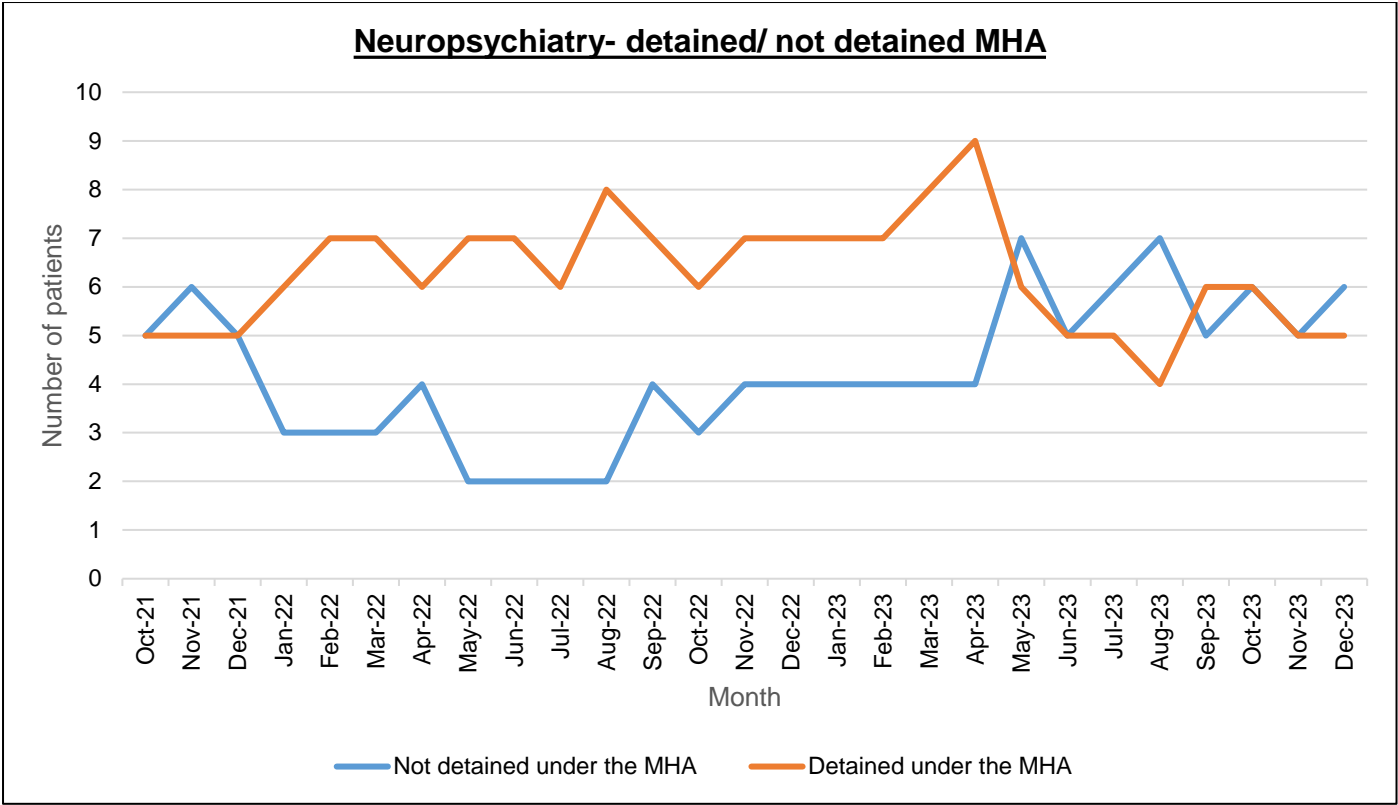
### Mental health services for older people- detained/ not detained MHA



### Low Secure- detained/ not detained



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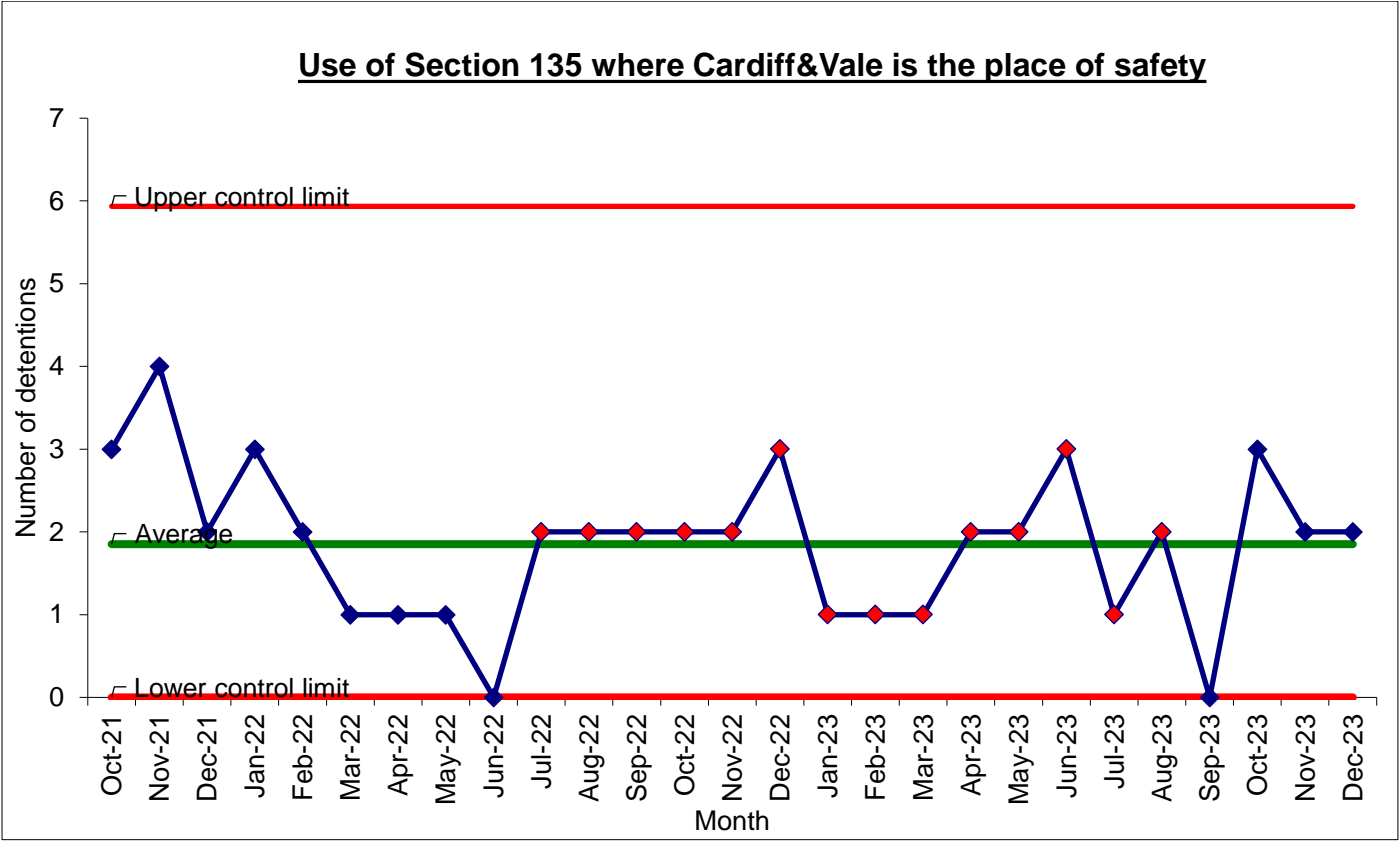


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**Section 135 – Warrant to search for and remove a mentally disordered person/patient from private premises to a place of safety**

During the period Section 135 (1) powers were used on five occasions. All uses resulted in a Section 2 to a Cardiff and Vale University Local Health Board Hospital.

During the period there were two uses of Section 135(2). One resulted in the person being brought back under Section 2 of the MHA, one resulted in the person being brought back under Section 3 of the MHA.



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## **Voluntary Assessment**

During Summer 2020, the electronic All Wales Monitoring Form (AWMF) was put into use. This is an electronic form that should be completed by Police Officers for every occasion that they bring a patient to Hospital for a Mental Health Assessment. The reasons for this can be;-

- Use of s135
- Use of s136
- Voluntary Assessment
- Mental Capacity Act

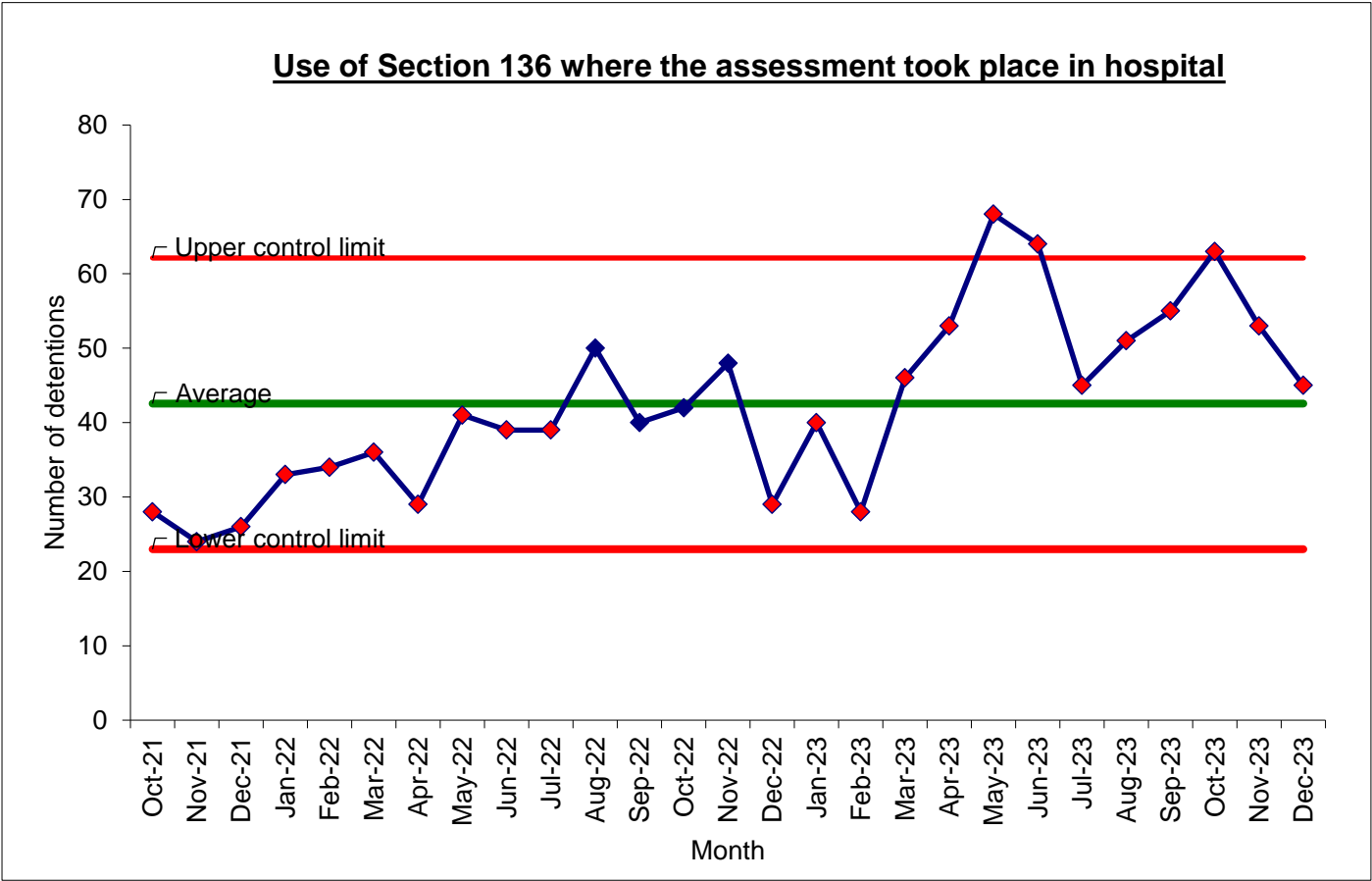
We continue to work with South Wales police to ensure the AWMF is completed each time a person is brought to hospital for an assessment and hope to see an improvement in the use of the electronic form going forward.

For this period, we have seen seven people for a Voluntary Assessment and no one was brought into hospital under the Mental Capacity Act.

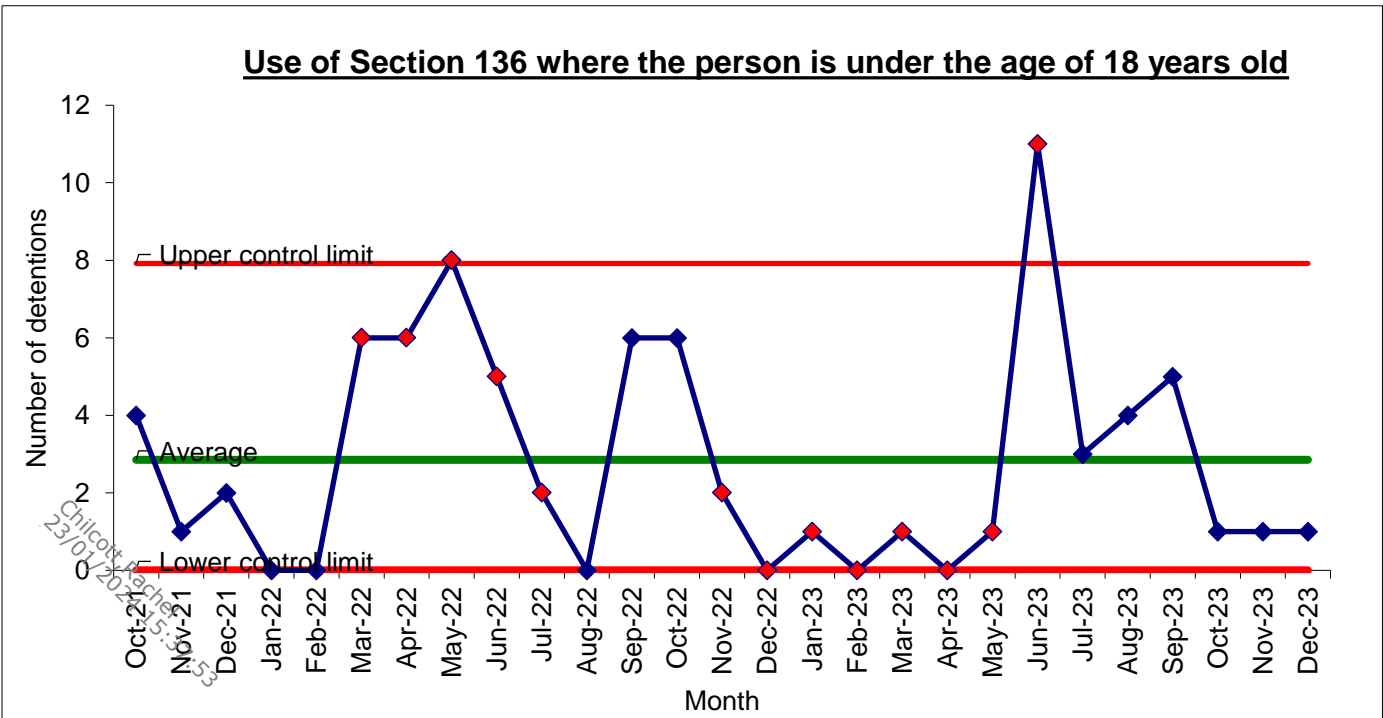
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**Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within Cardiff and Vale UHB**

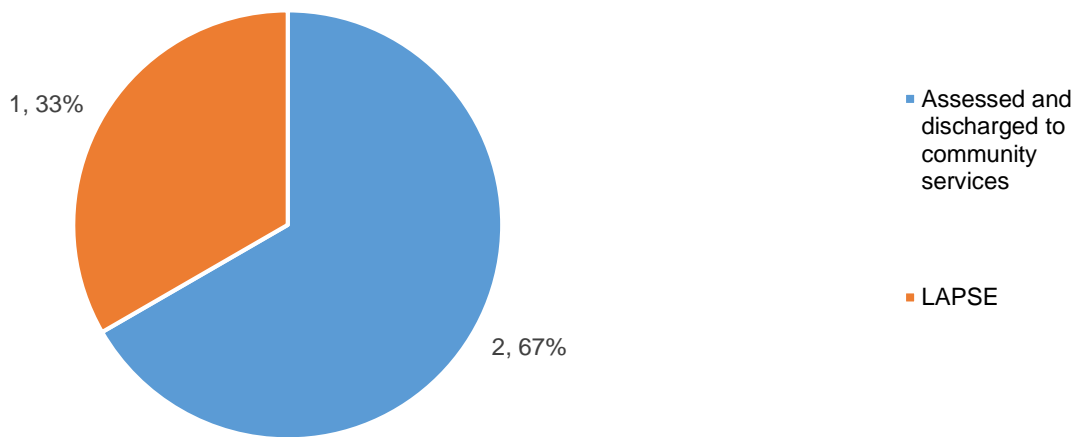
During the period a total of 161 assessments were initiated by Section 136 where the MHA assessment took place in a hospital as the place of safety.



Three of those assessments were carried out on patients under the age of 18. Included in the above data are those under 18 years of age. None of these were repeat presentations This is extracted below;-

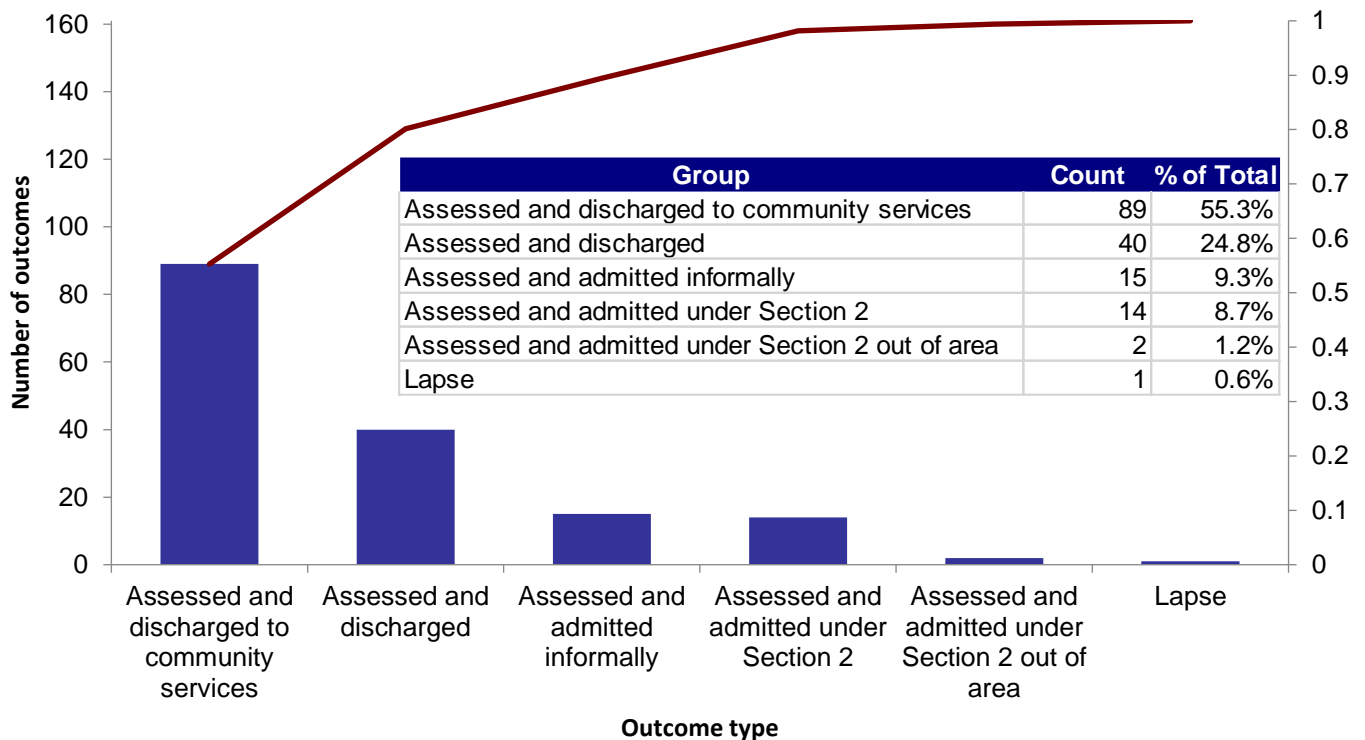


### Outcome of CAMHS Section 136 assessments



The pareto chart highlights that 80.1%% of individuals assessed in hospital under Section 136 were not admitted to hospital. Those individuals who are not admitted or discharged to another service are provided with information on Mental Health support services for possible self-referral.

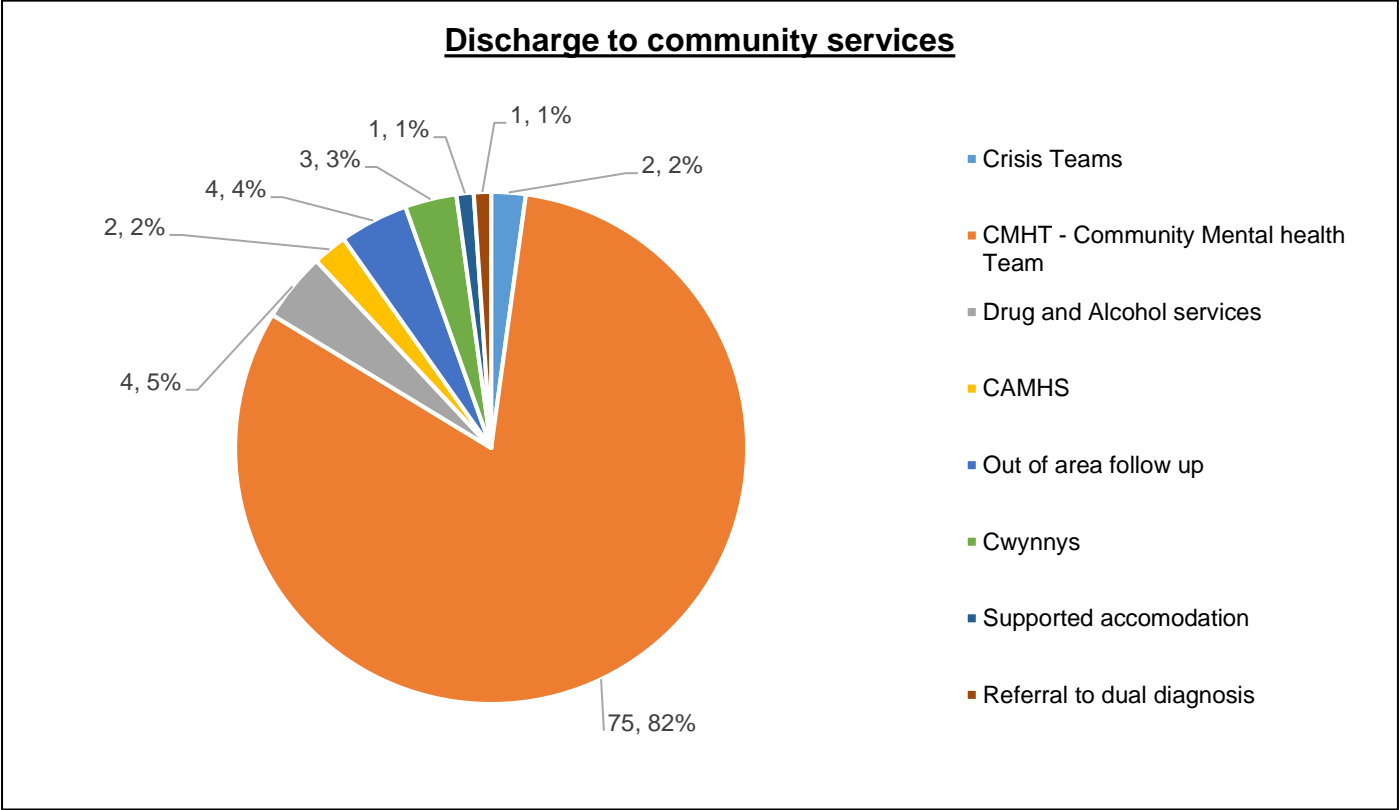
### Outcome of Section 136 assessments which took place in hospital during the period October- December 2023



Included in the above data are the outcomes for those under 18 years of age.

The one lapsed detention was due to our shift coordinator not being informed of the detention- the patient was admitted to a general health ward following the S136.

The below chart is a breakdown of the referrals to Community Services as a result of a s136 assessment. Please note that patients can be referred to multiple Community Services, so it is possible that the numbers below are higher than the total number of s136 used.



**Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within a Police Station**

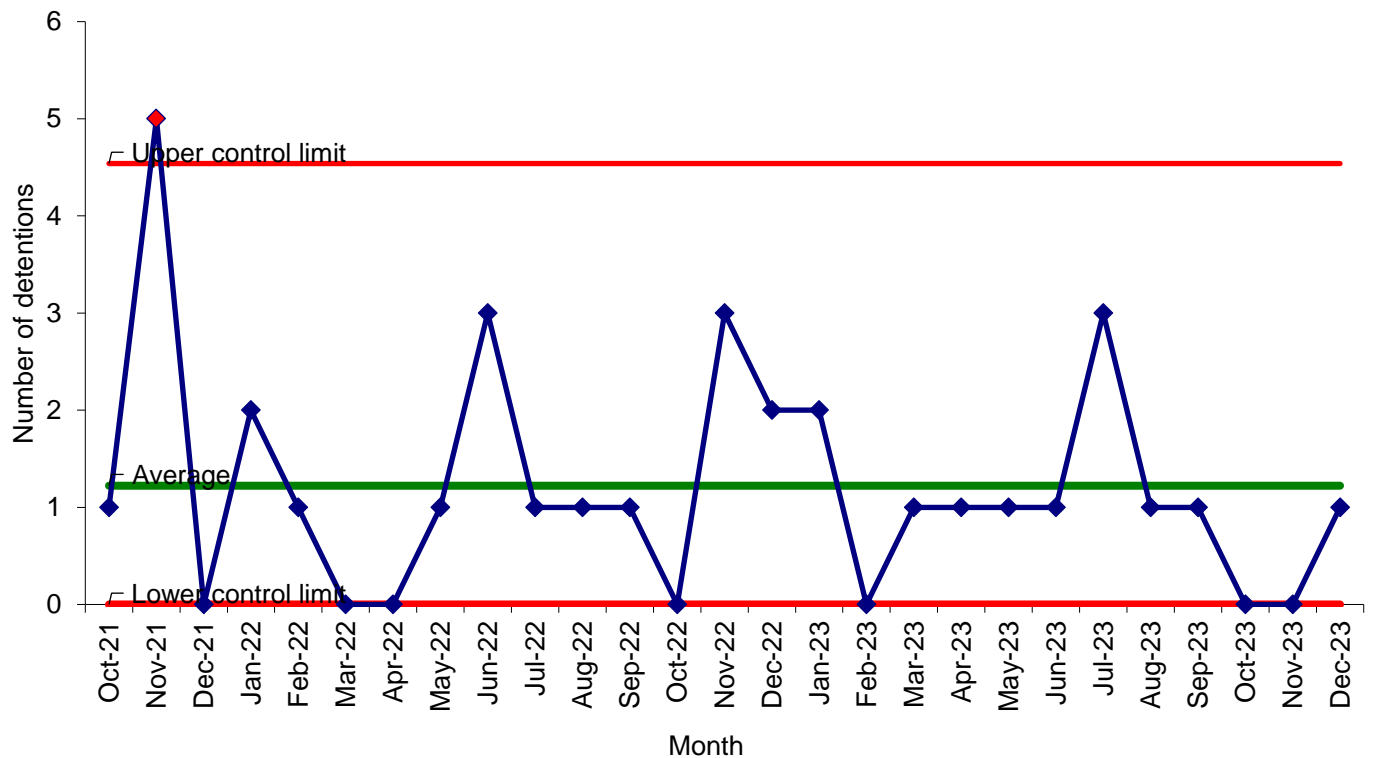
During the period there were no assessments initiated by Section 136 powers where the MHA Assessment took place in Cardiff Bay Custody Suite.

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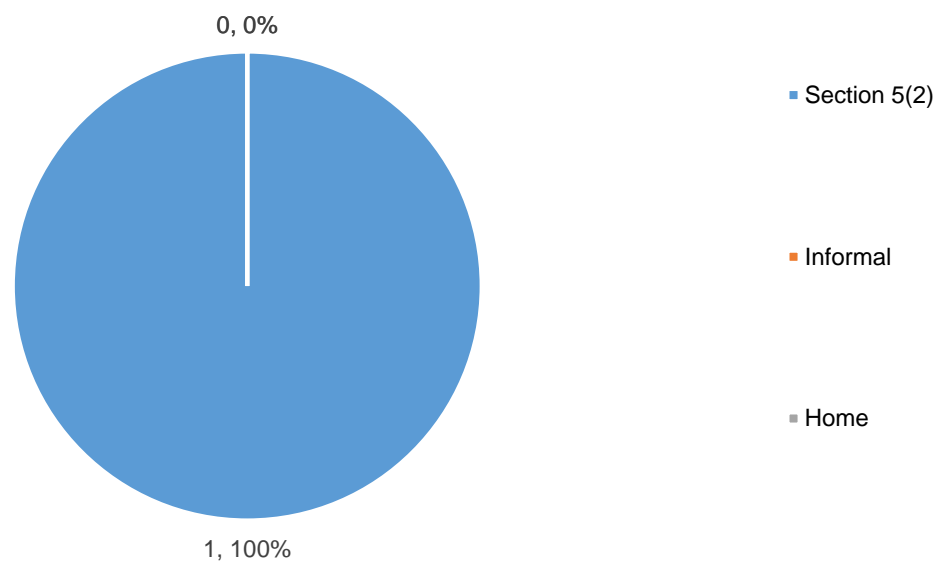


## Section 5(4) - Nurses Holding Power

### Section 5(4)- nurses holding power up to six hours

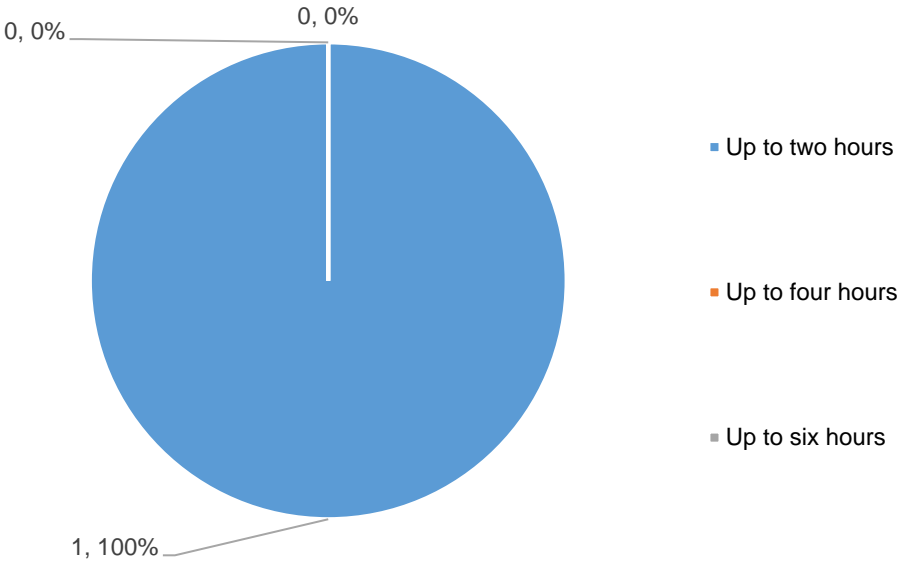


### Outcome of Section 5(4) during the period October- December 2023



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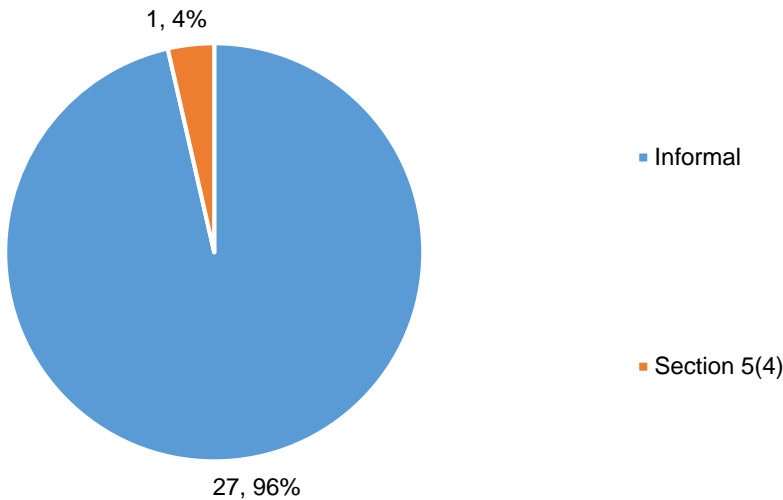
**Number of hours patients were detained under Section 5(4) during the period October- December 2023**



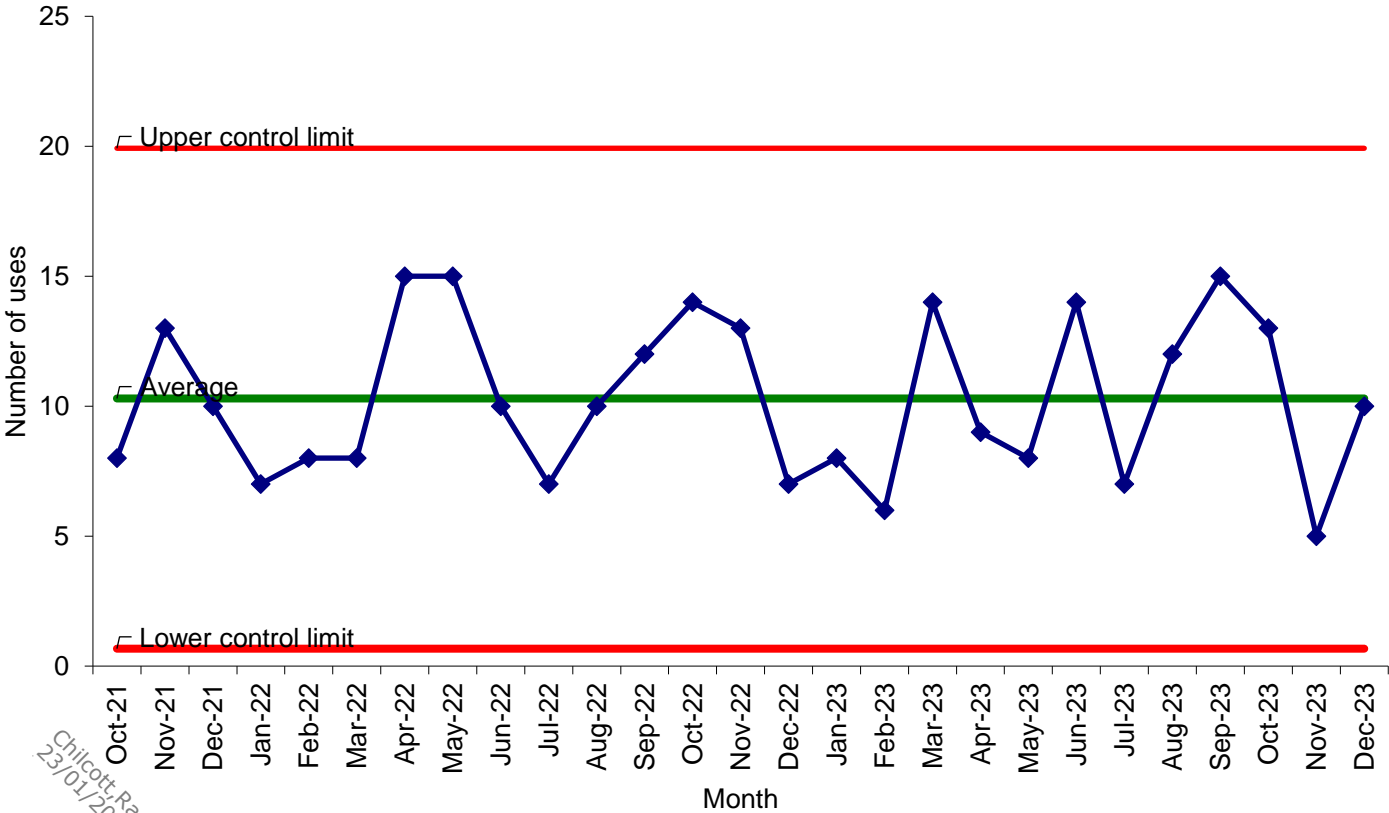
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**Section 5(2) - Doctors holding power**

**Legal status prior to Section 5(2) during the period October- December 2023**

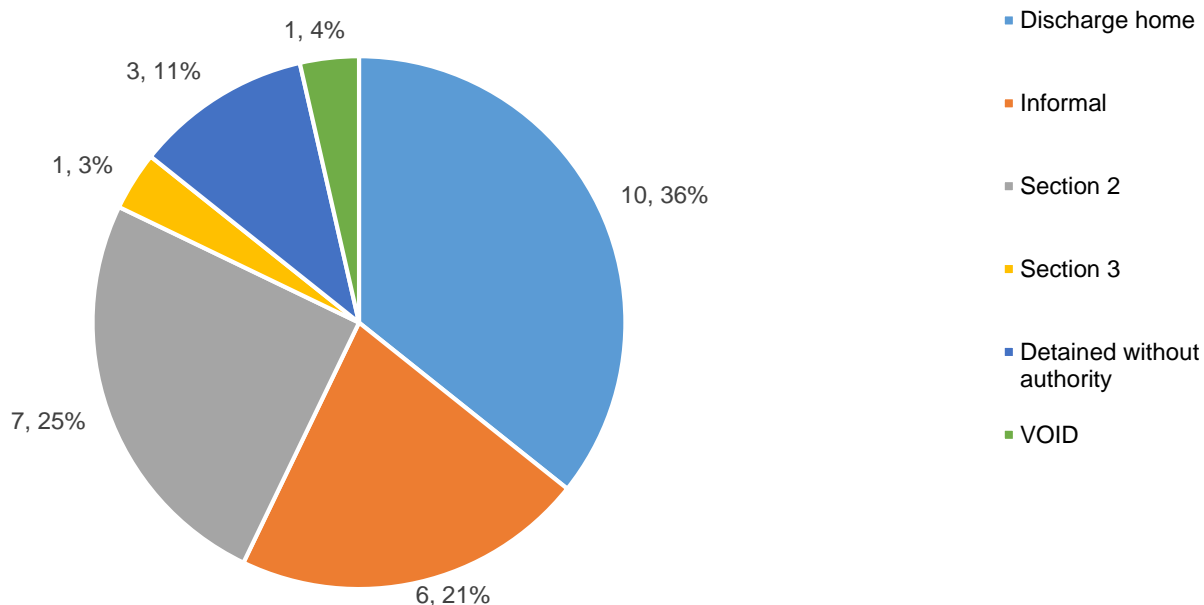


**Section 5(2)- doctors holding power up to 72 hours**



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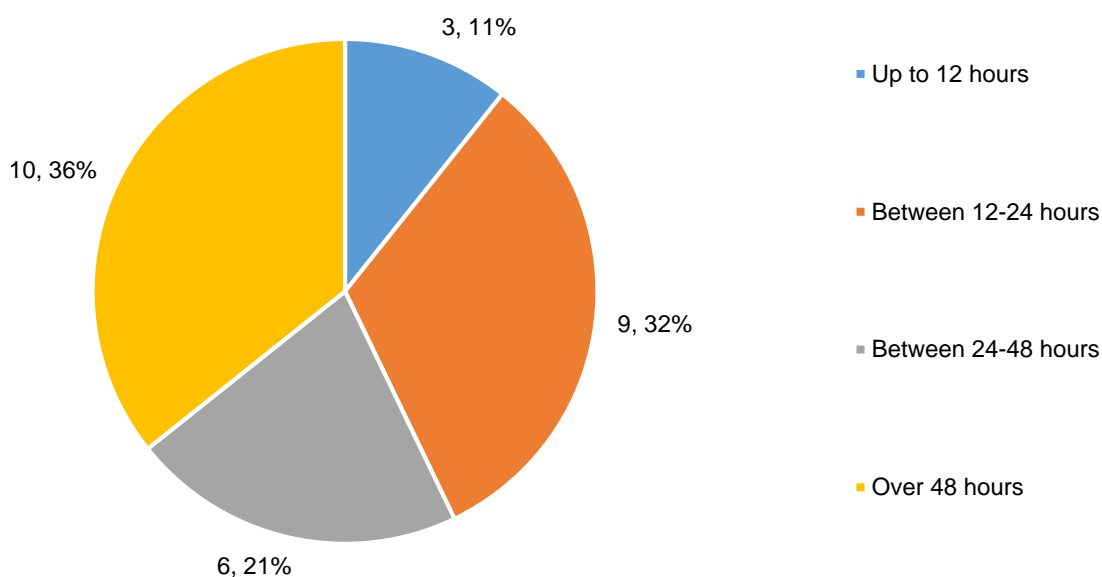
### Outcome of Section 5(2) during the period October- December 2023



One use was void as patient was already on a S2.

3 uses were fundamentally defective as they were either not signed by the doctor enacting the power or were on English versions of the documentation which are not permitted under the Welsh regulations.

### Number of hours patients were detained under Section 5(2) during the period October- December 2023

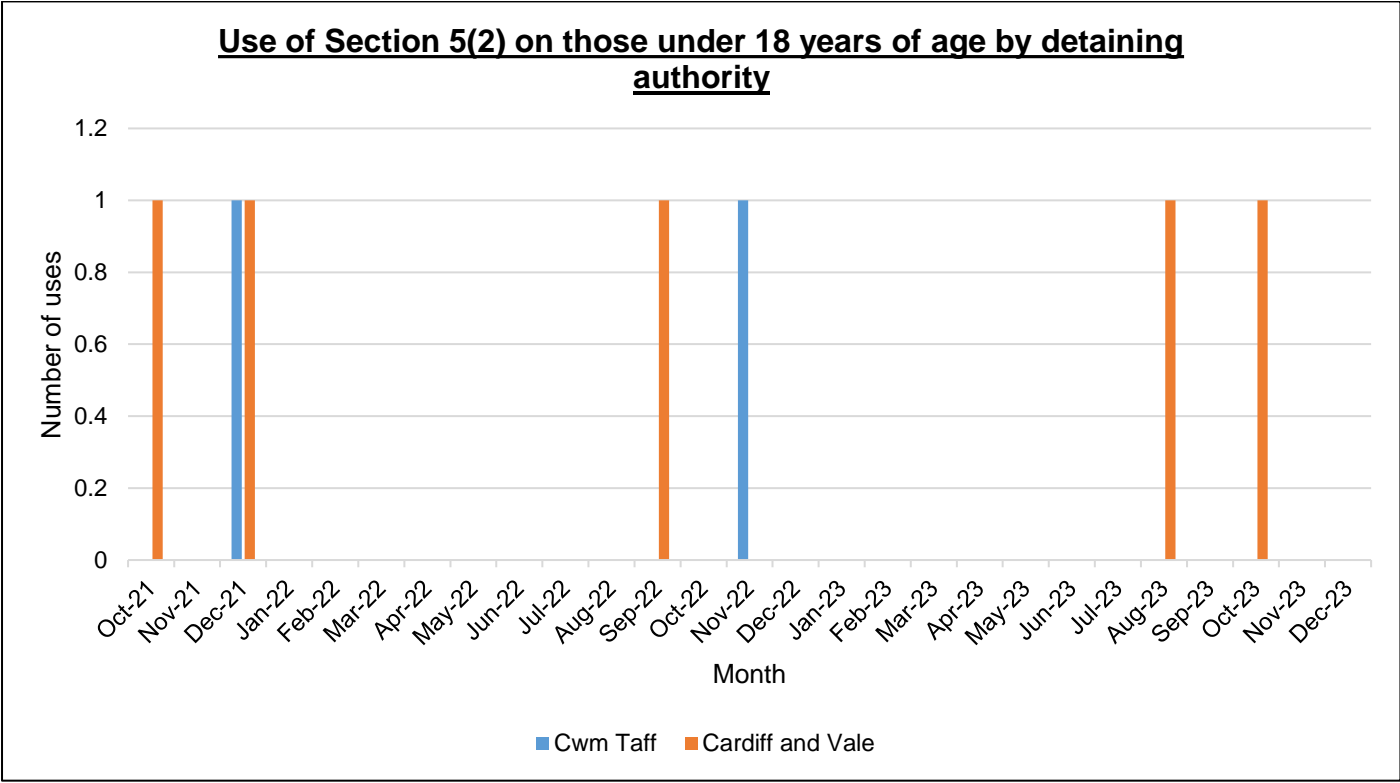


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CAMHS Commissioned Inpatient Data

Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

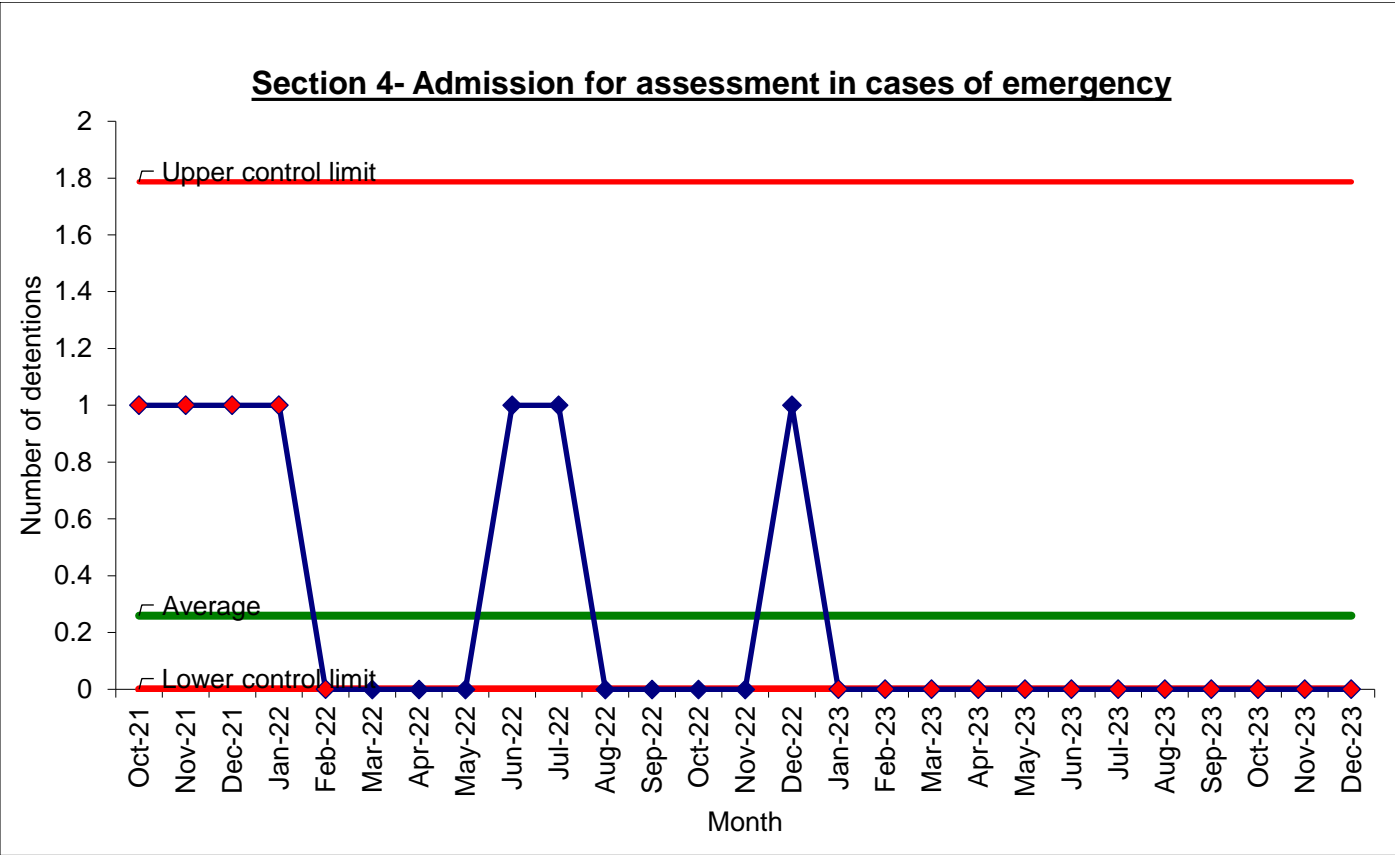
During the period there was one use of Section 5(2) or Section 5(4) holding powers on patients under the age of 18 in either Cardiff and Vale UHB or Cwm Taf Morgannwg UHB. The outcome of the holding power was that the person stayed in hospital informally.



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**Section 4 - Admission for Assessment in Cases of Emergency**

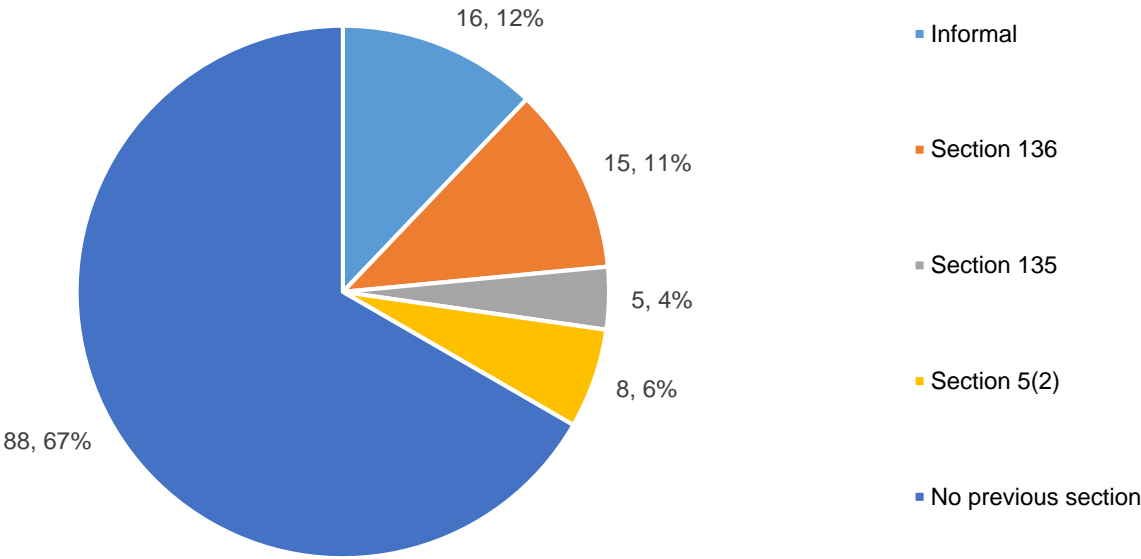
Section 4 wasn't used during the period.



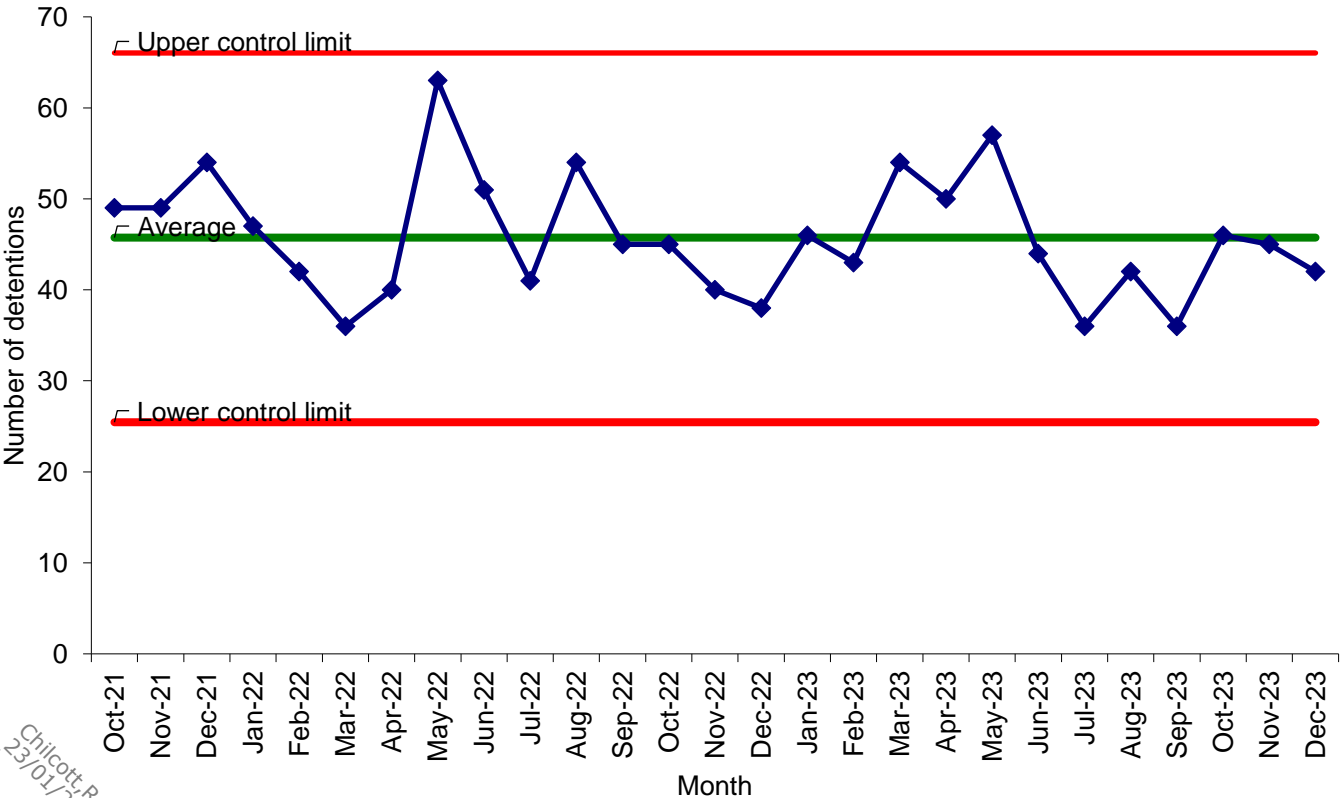
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Section 2 – Admission for Assessment

Legal status prior to Section 2 during the period October- December 2023

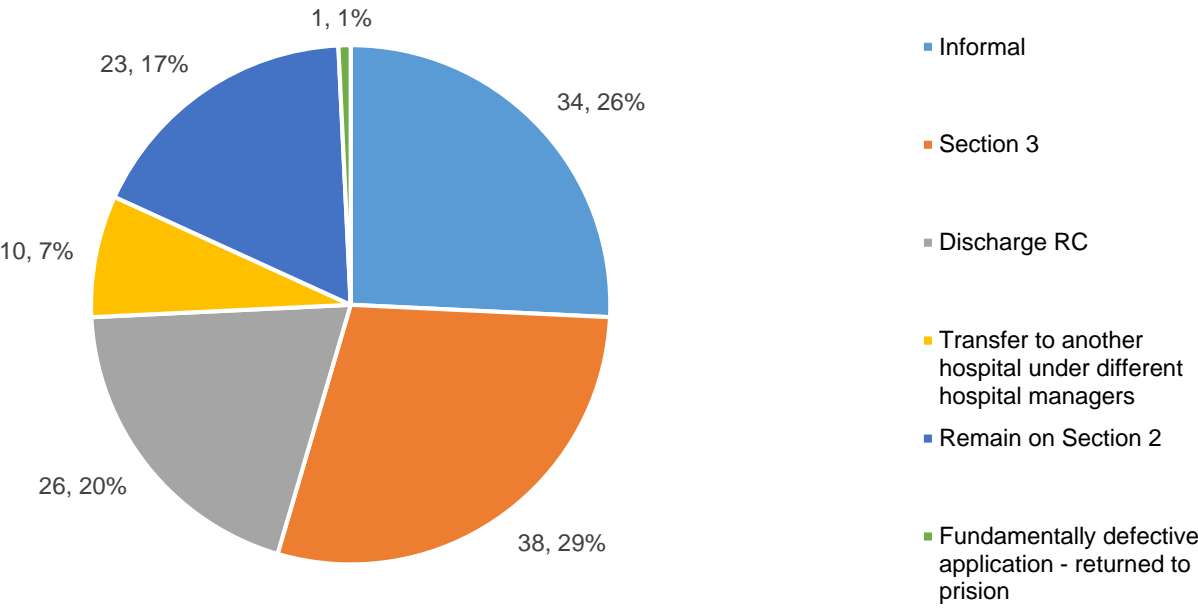


Section 2- Admission for assessment for up to 28 days



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**Outcome following Section 2 during the period October- December 2023**



During the period one use of Section 2 was deemed fundamentally defective due to the person already being detained in prison at the time of the application being made. The person was returned to prison.

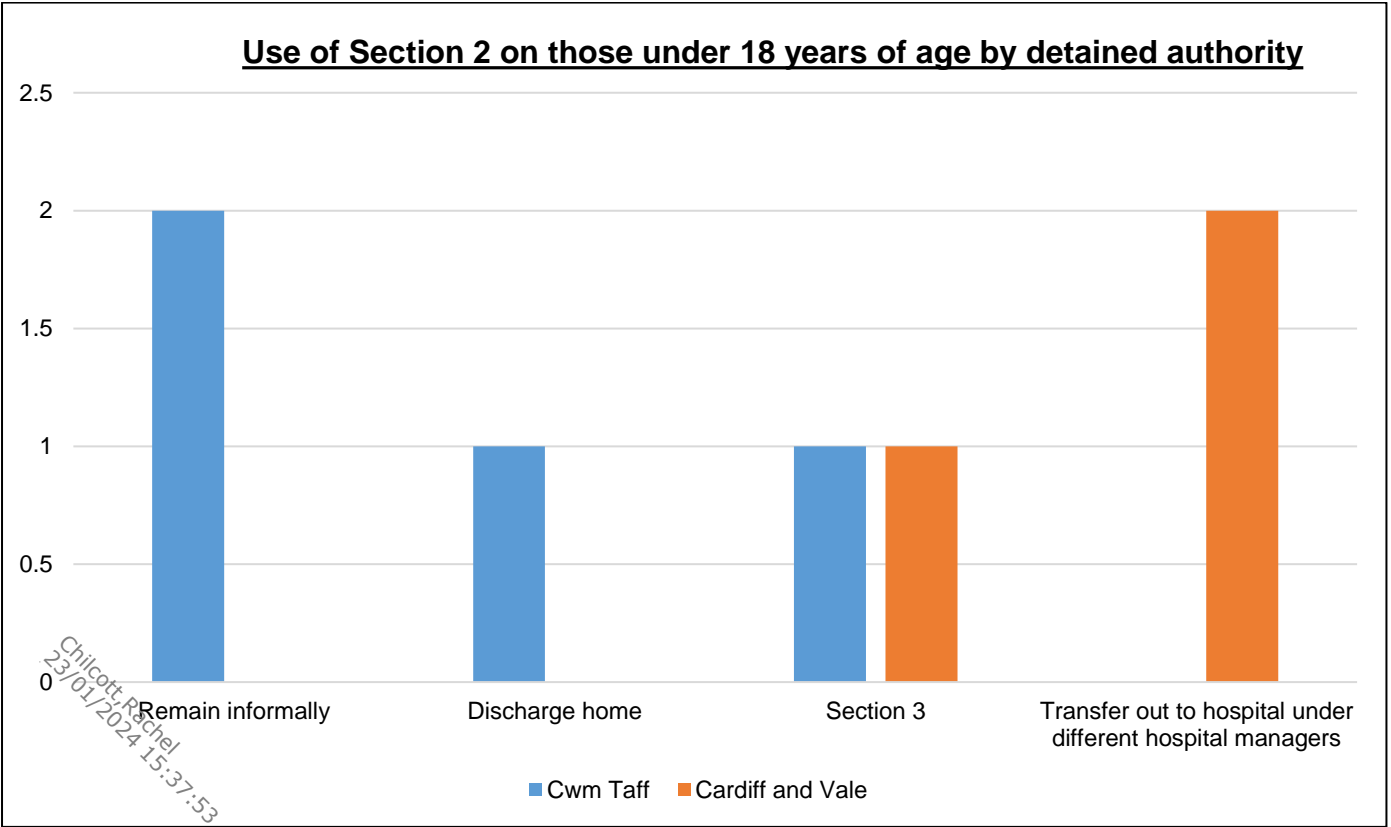
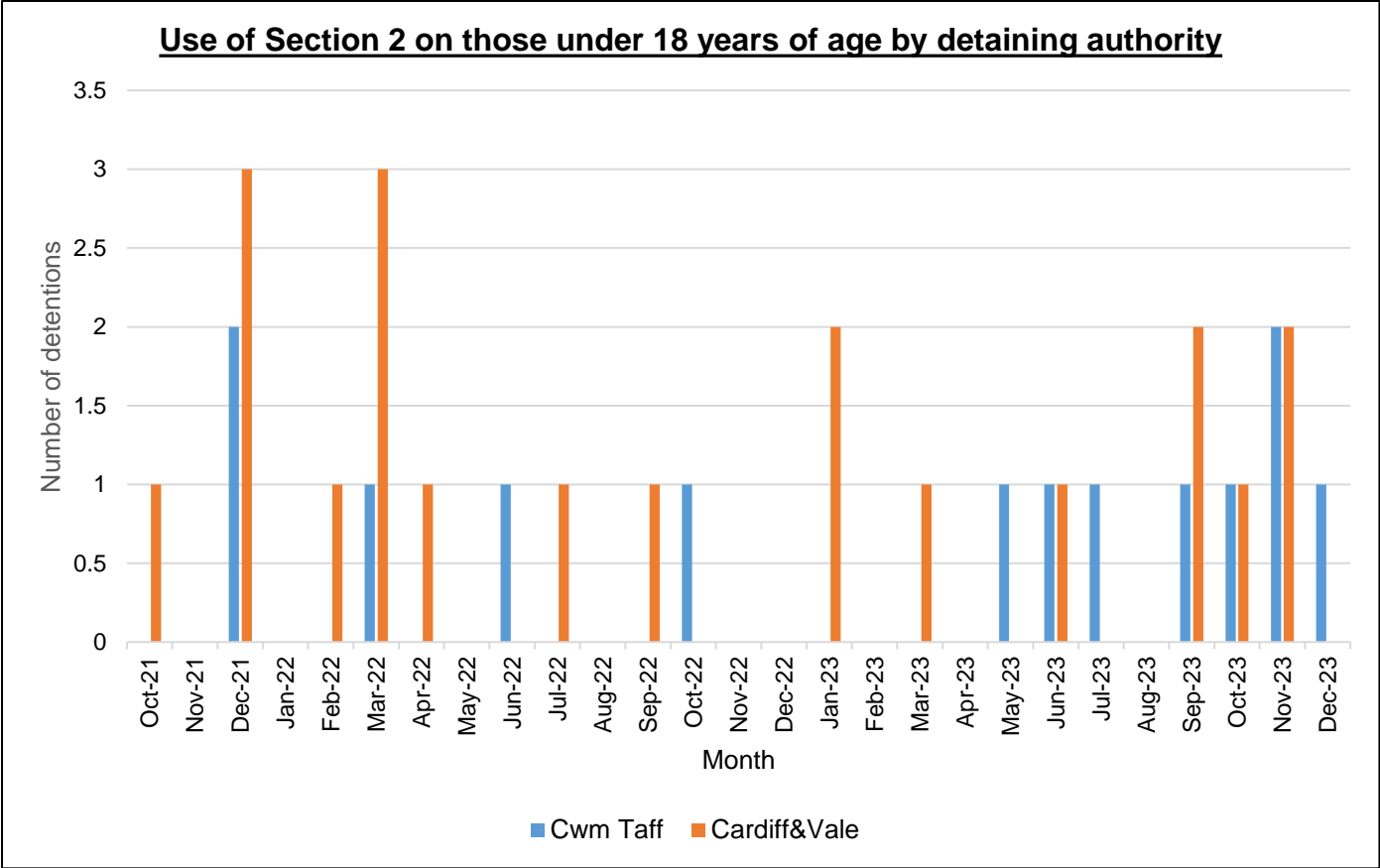
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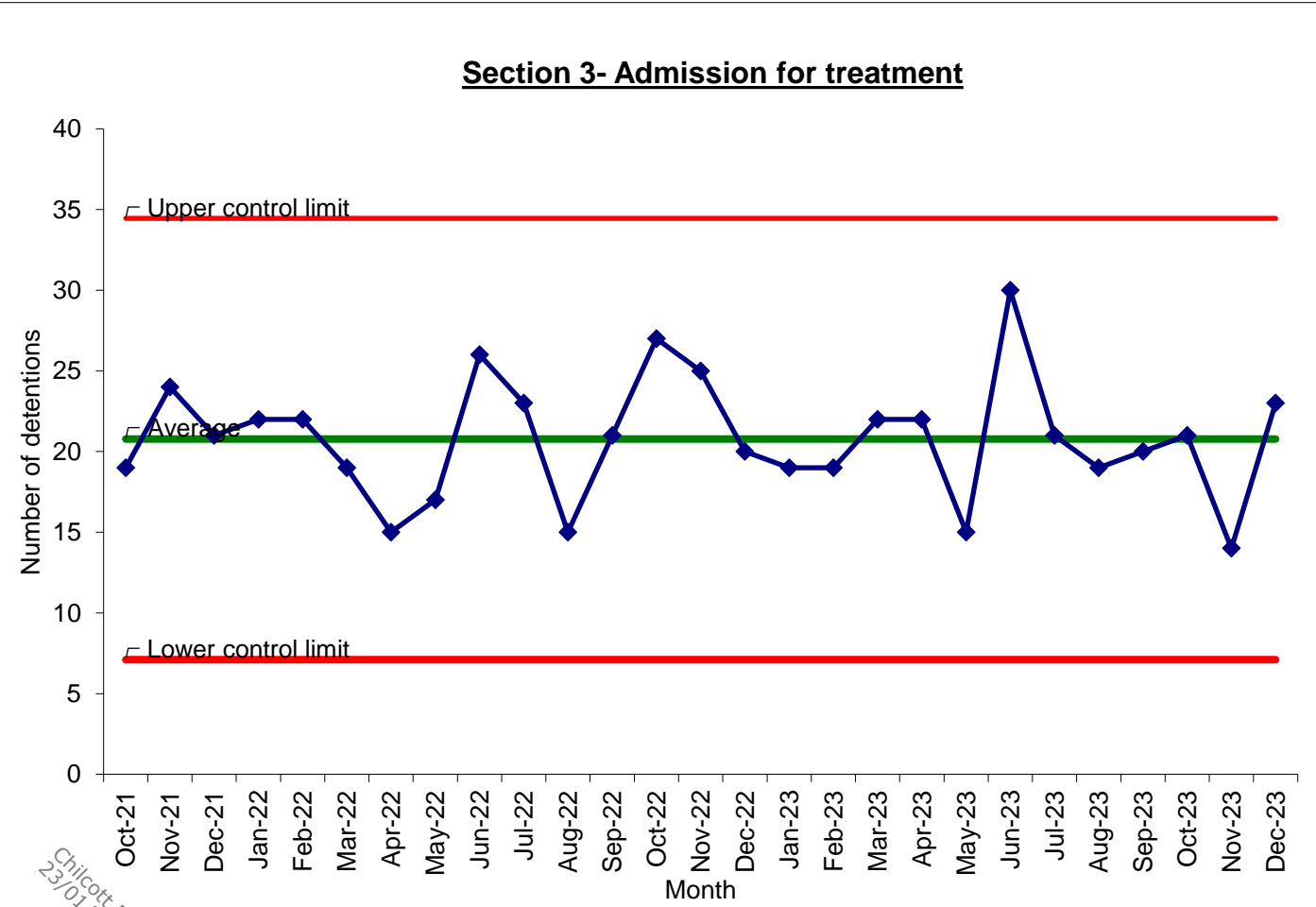
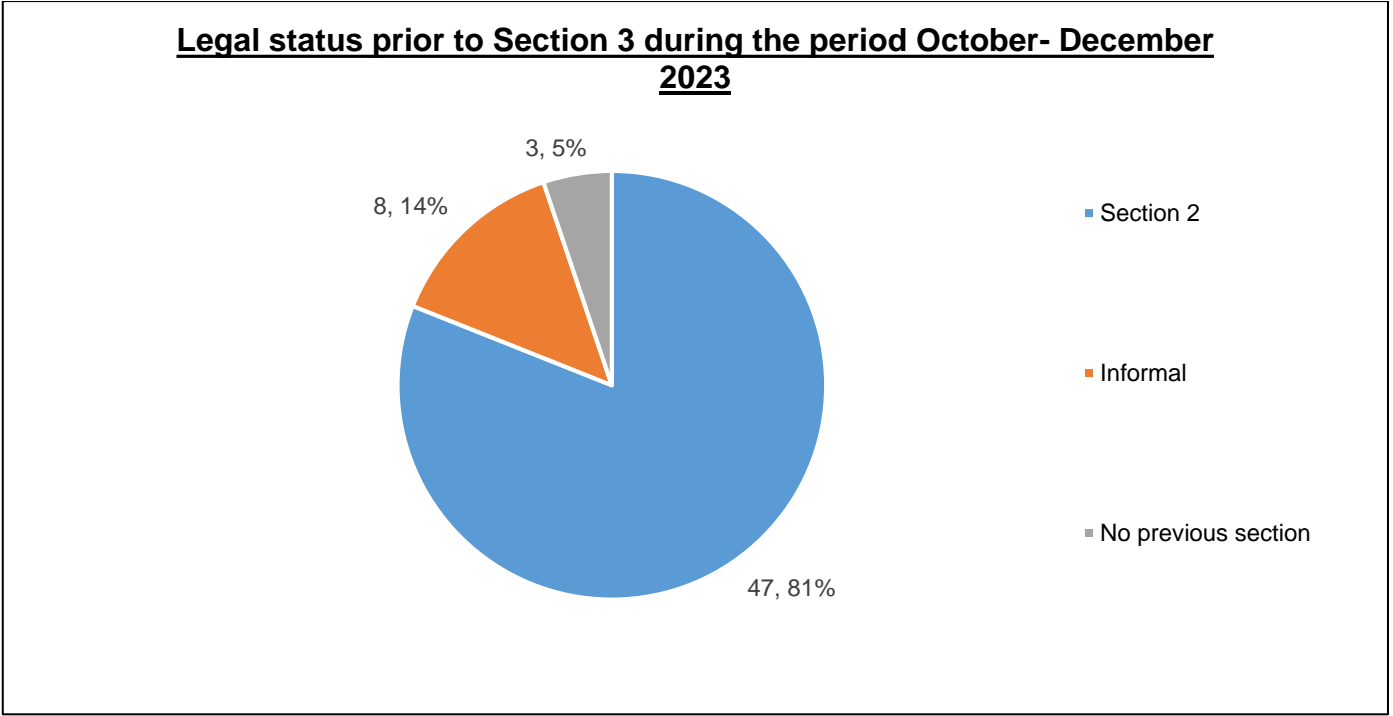
CAMHS Commissioned Inpatient Data

Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

Included in the above data are those under 18 years of age. This is extracted below;-

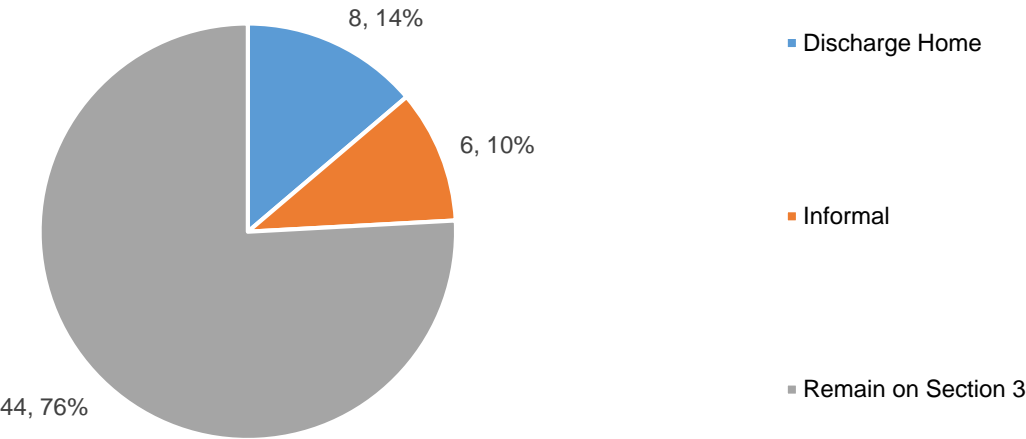


Section 3 – Admission for Treatment



The above data would include those under 18 years of age.

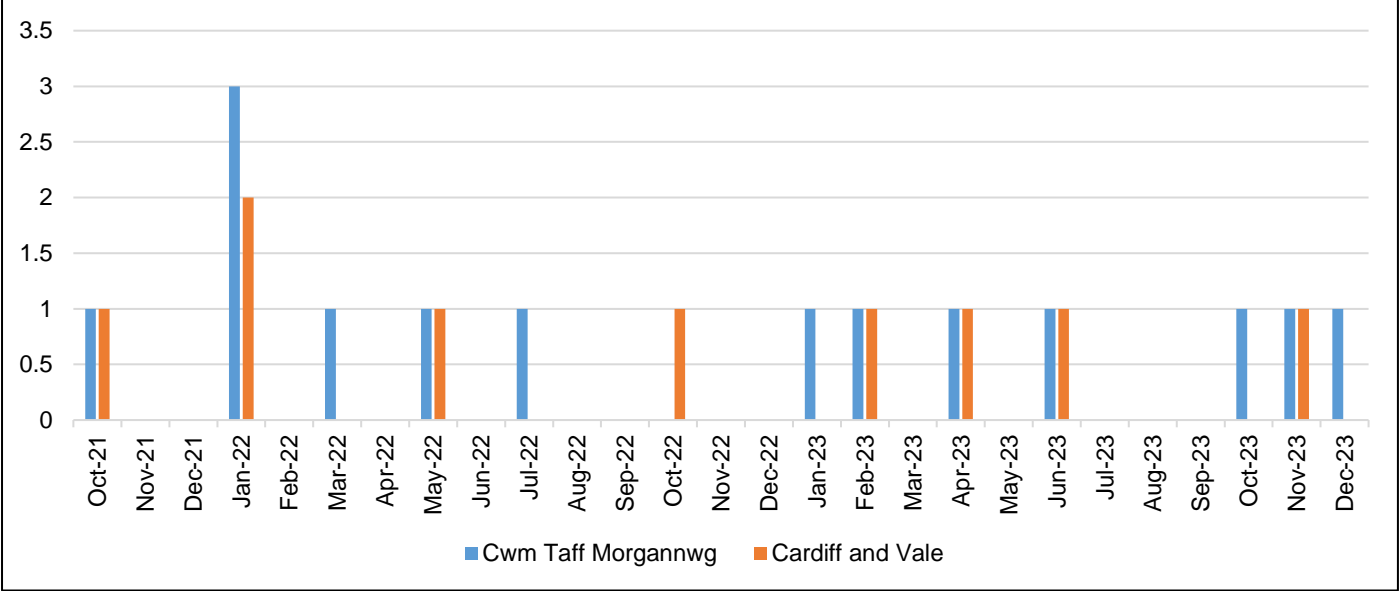
**Outcome following Section 3 during the period October- December 2023**



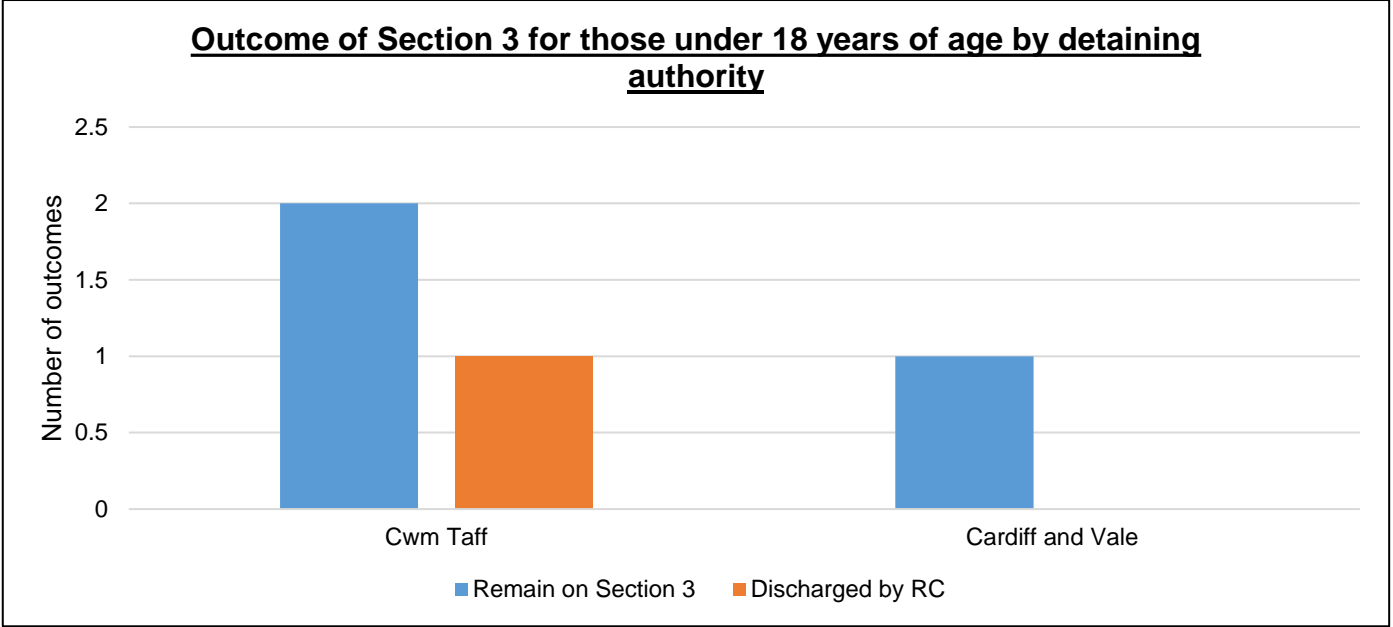
**CAMHS Commissioned Inpatient Data**

Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients. There were four uses of Section 3 during the period.

**Use of Section 3 on those under 18 years of age by detaining authority**



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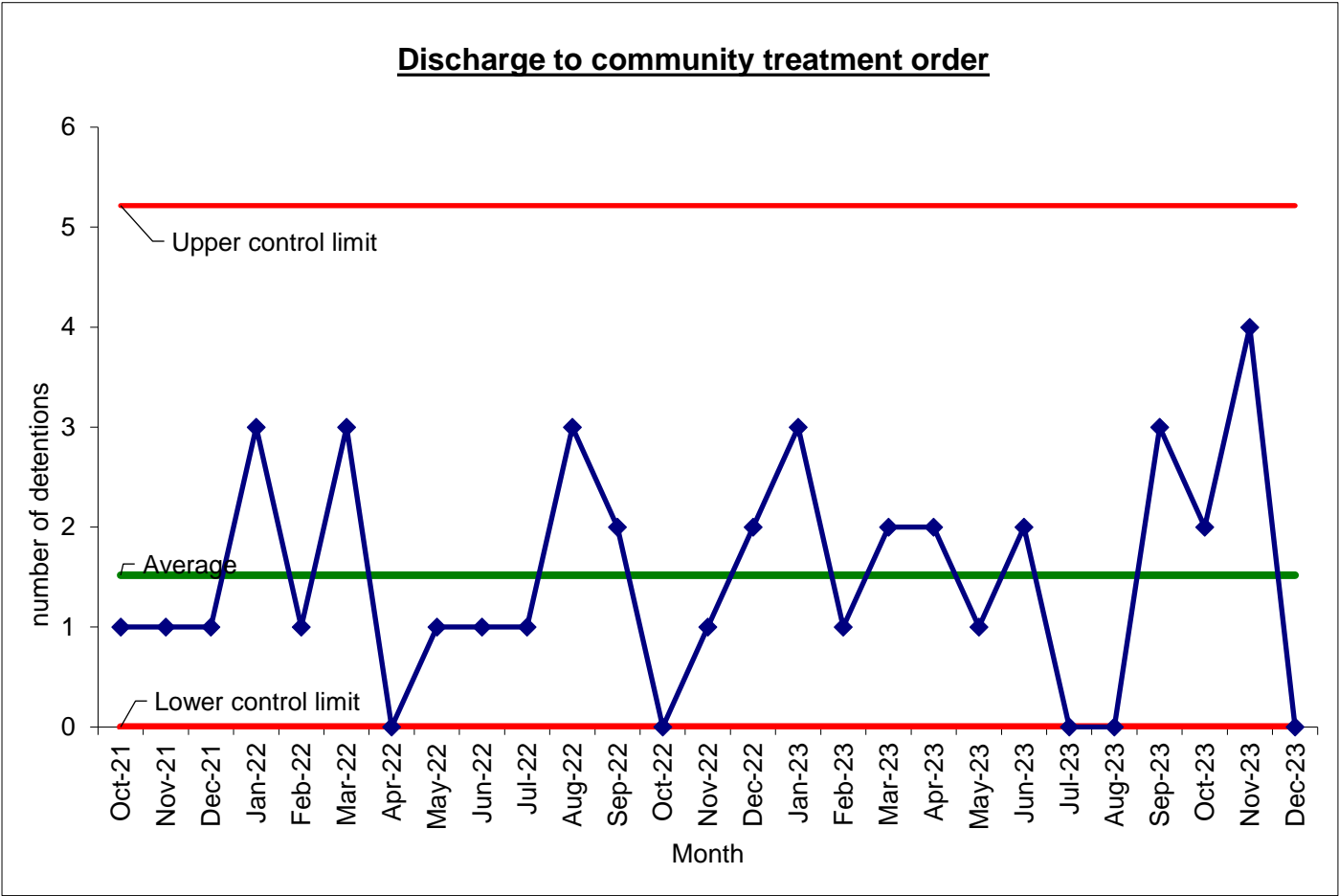


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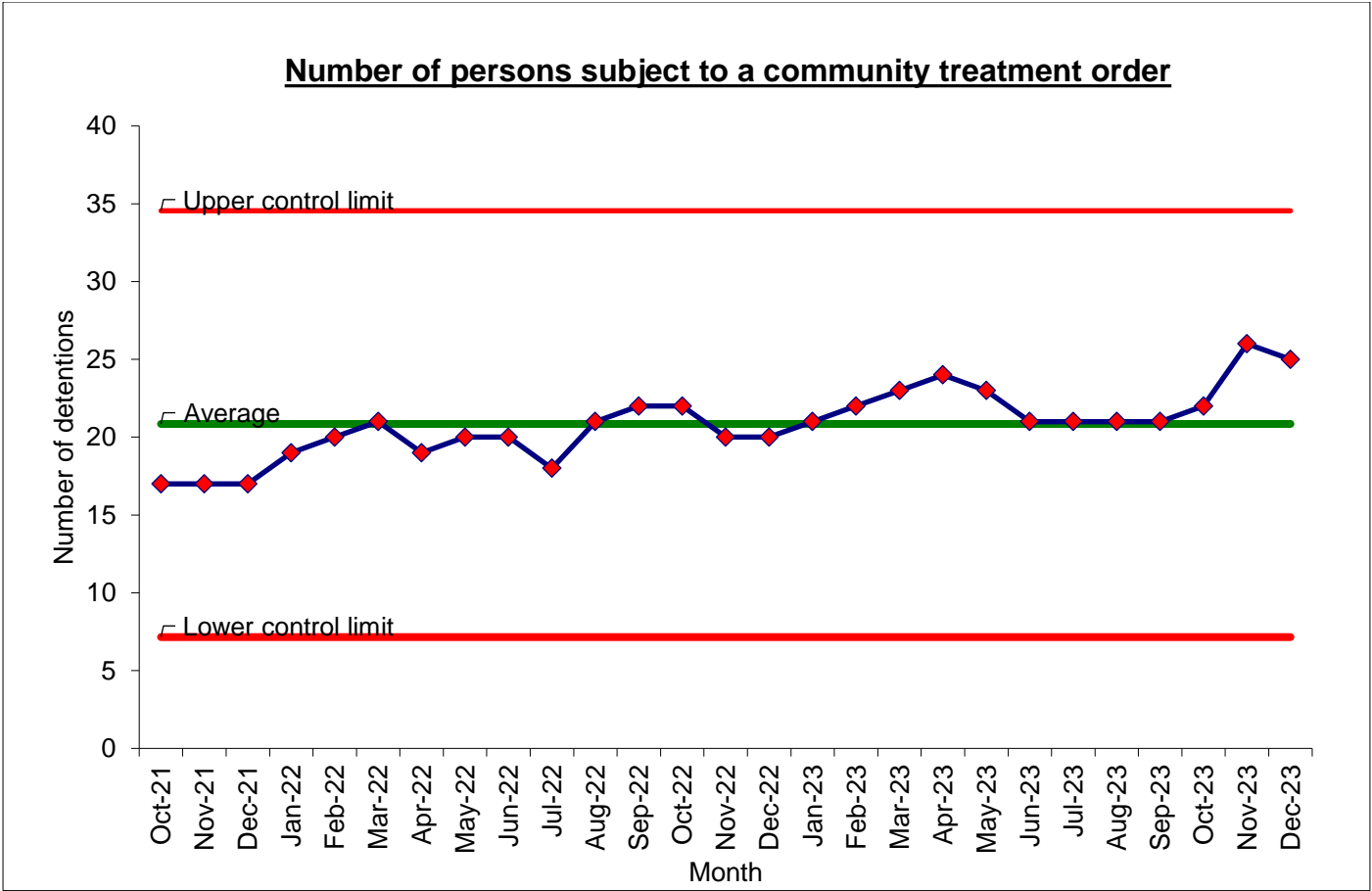
**Community Treatment Order**

During the period October- December 2023 six patients were discharged to Community Treatment Order.

As at 31<sup>st</sup> December 2023, twenty-five patients were subject to a Community Treatment Order (CTO).



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**Recall of a community patient under Section 17E**

During the period, the power of recall was used once. The use resulted in the patient’s CTO being revoked.

**CAMHS Commissioned Inpatient Data**

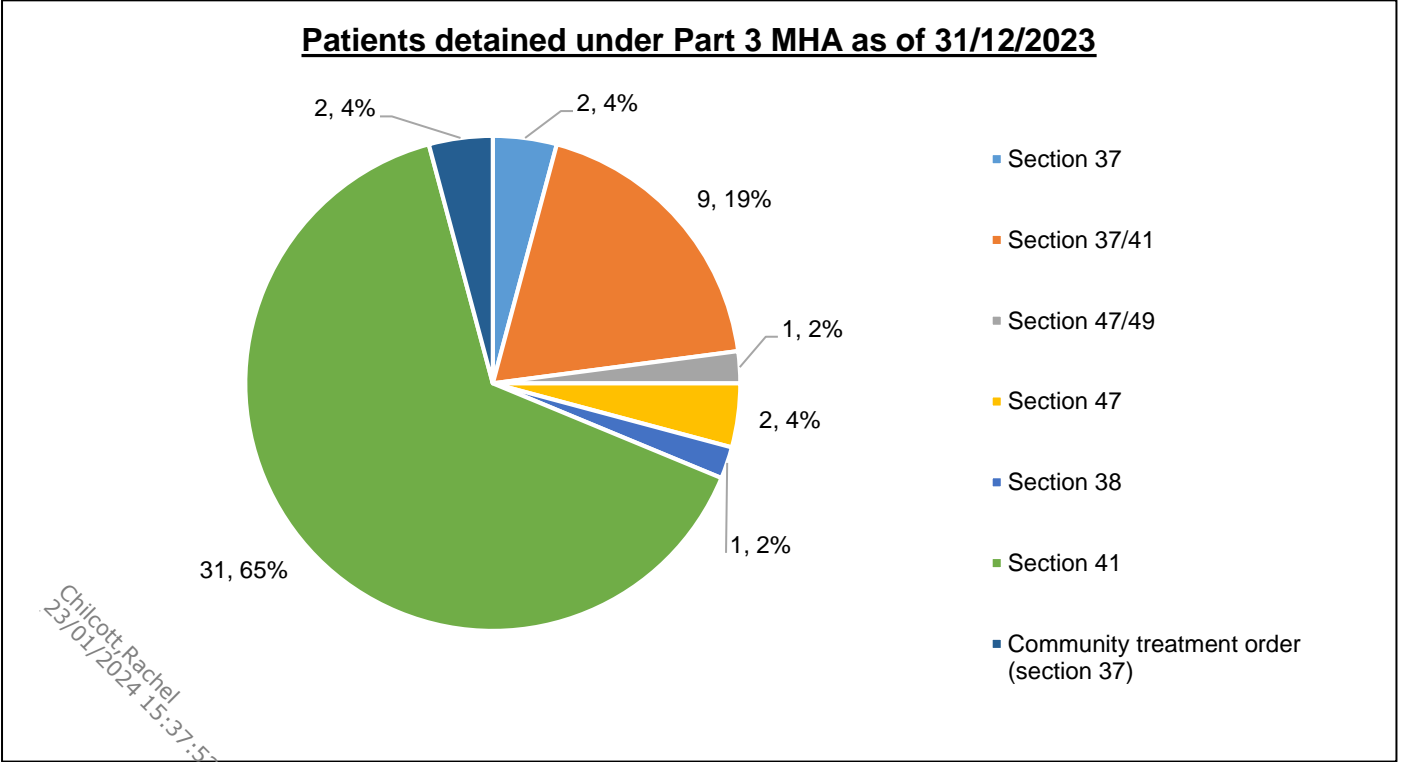
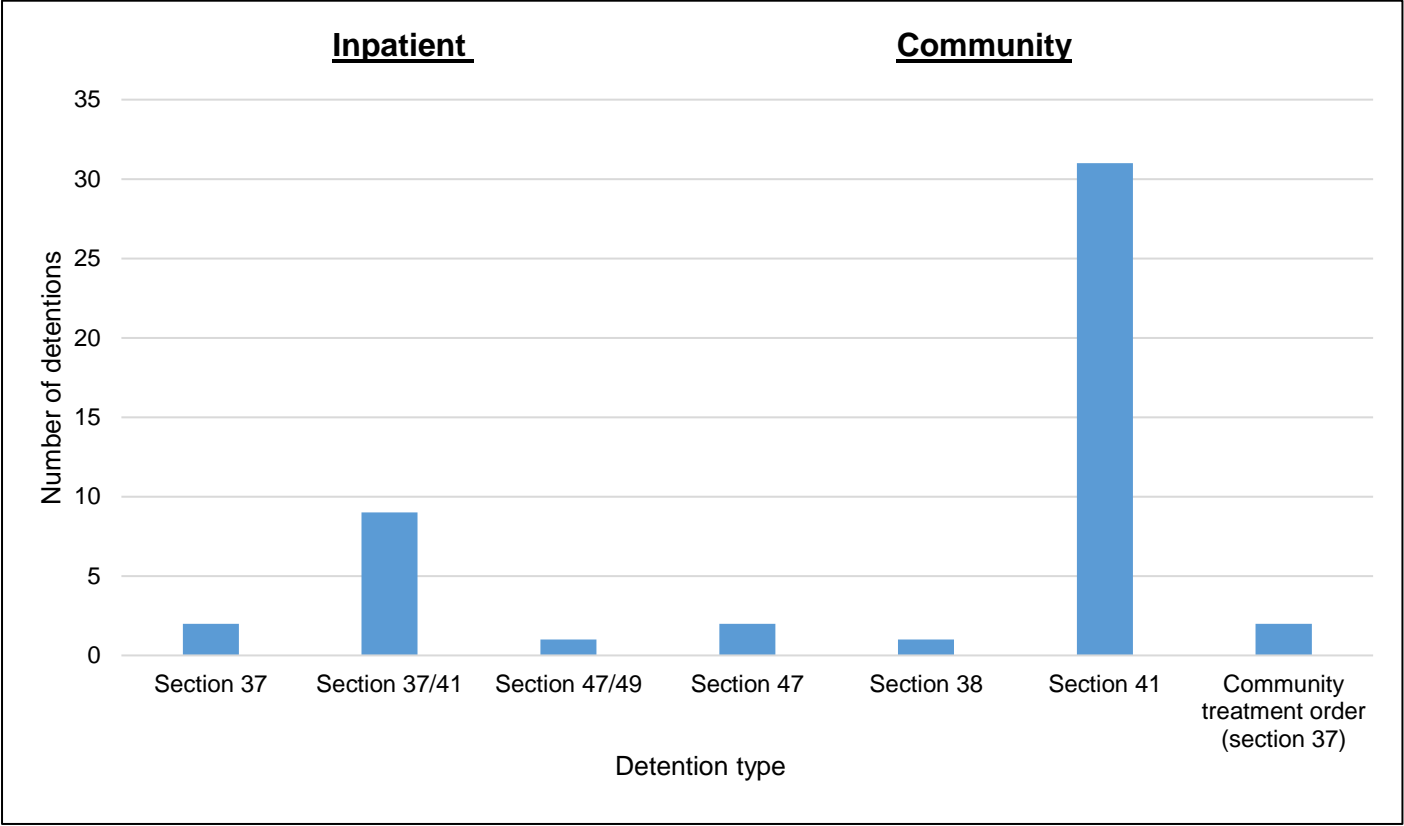
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

During this period there was one CAMHS patients who became subject to a Community Treatment Order- this was under Cwm Taf Morgannwg UHB.

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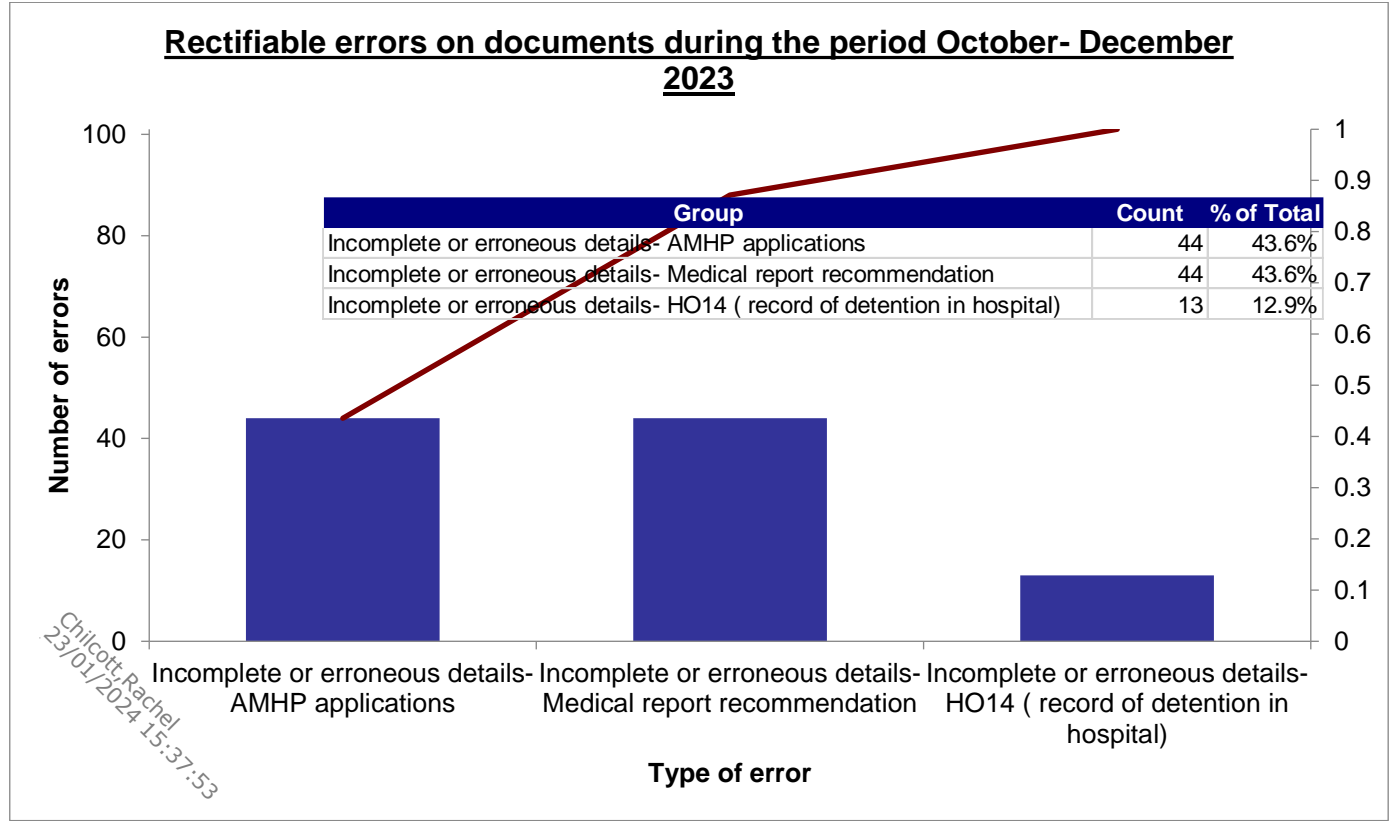
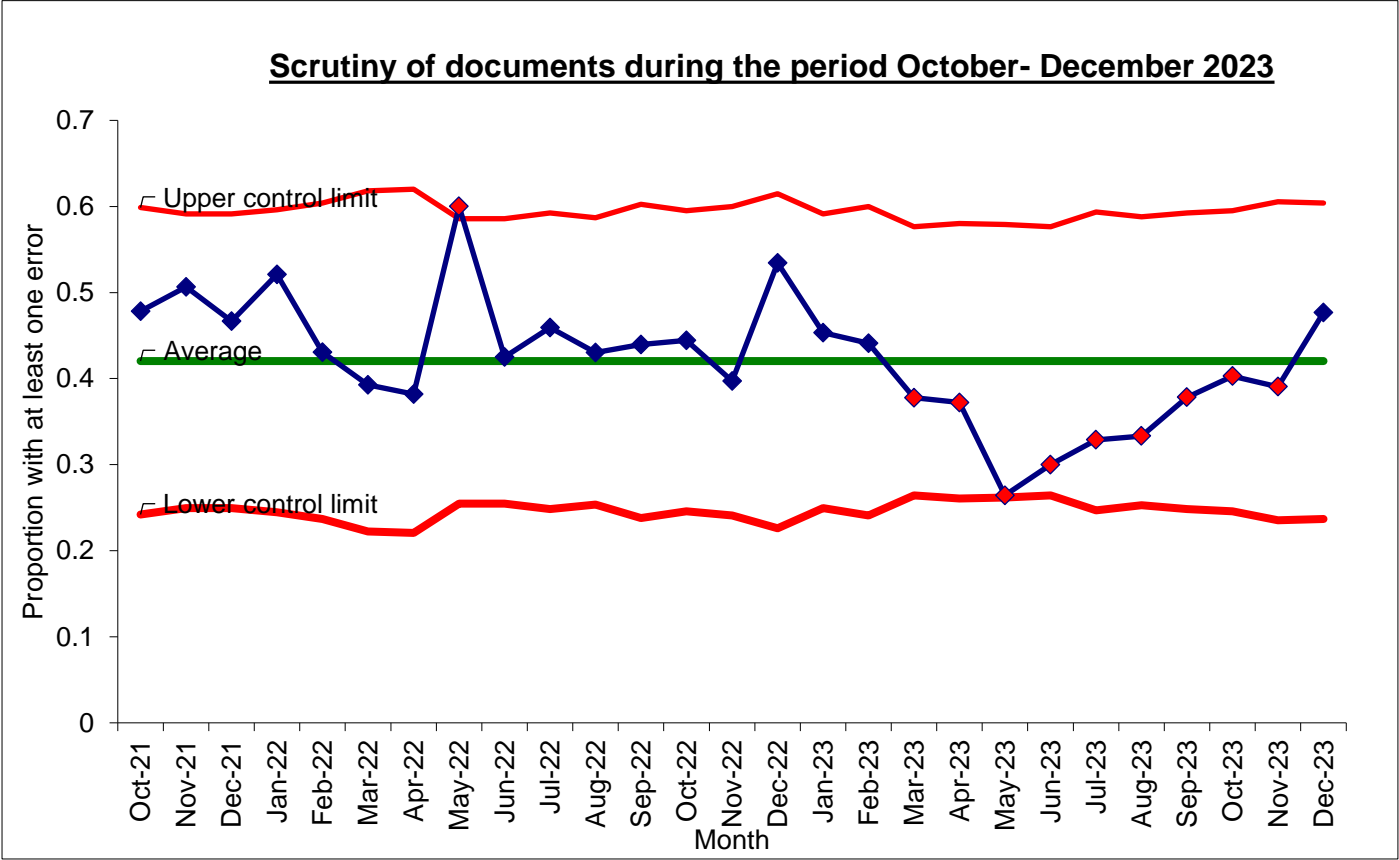
**Part 3 of the Mental Health Act 1983**

The number of Part 3 patients detained in Cardiff and Vale University Health Board Hospitals or subject to Community Treatment/Conditional Discharge in the community as at 31st December 2023.



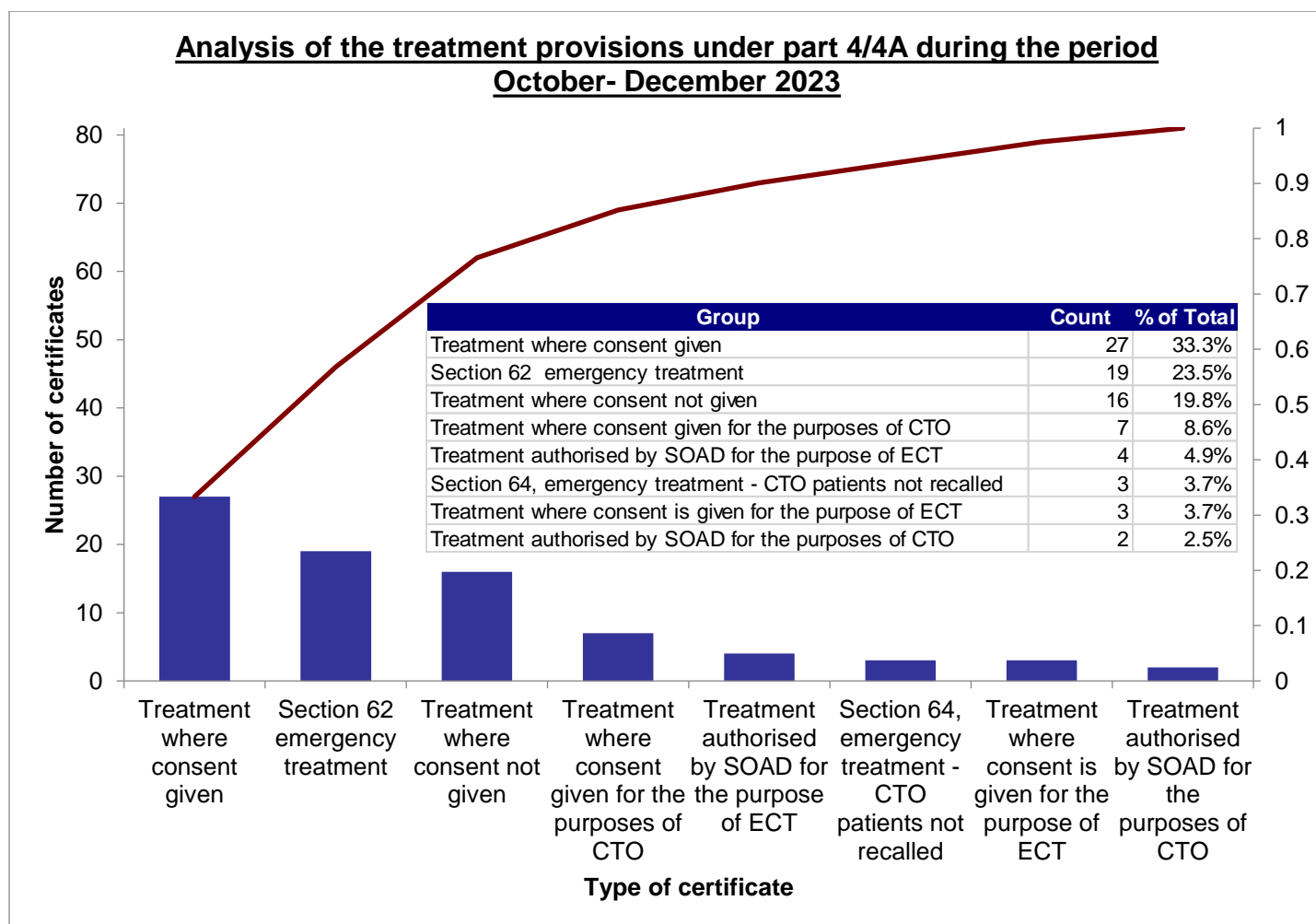
**Scrutiny of documents during the period**

The chart above is a different type of control chart (P Chart) which looks at the proportions. The width of the control limits is dictated by the size of the denominator, so a larger denominator will have a narrower limit.





## Consent to Treatment



## Urgent Treatment

There are some circumstances in which the approved clinician may authorise a detained patient's urgent treatment under section 62 however this applies only to patients whose treatment is covered by Part 4 of the Act which is concerned with the treatment of detained patients and Part 4A supervised community treatment patients recalled to hospital.

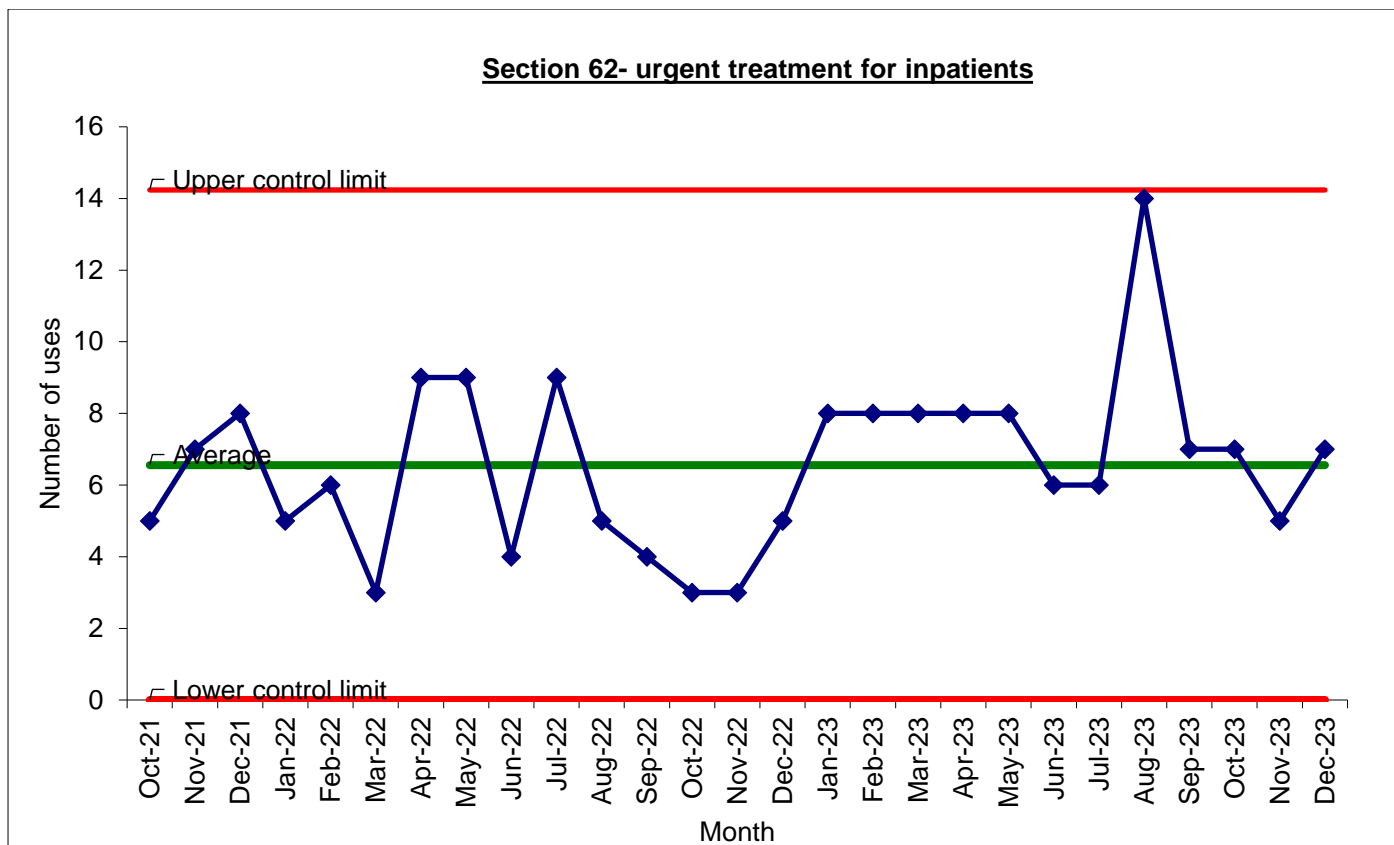
Urgent treatment is defined as treatment that is:

- Immediately necessary to save the patient's life; or
- That is not irreversible but is immediately necessary to prevent a serious deterioration of the patient's condition; or
- That is not irreversible or hazardous but is immediately necessary to alleviate serious suffering by the patient; or
- That is not irreversible or hazardous but is immediately necessary and represents the minimum interference to prevent the patient from behaving violently or being a danger to himself or others.

A patient's treatment may be continued pending compliance with s.58, if discontinuation would cause serious suffering to the patient.

Urgent treatment can be used in any of the following instances:

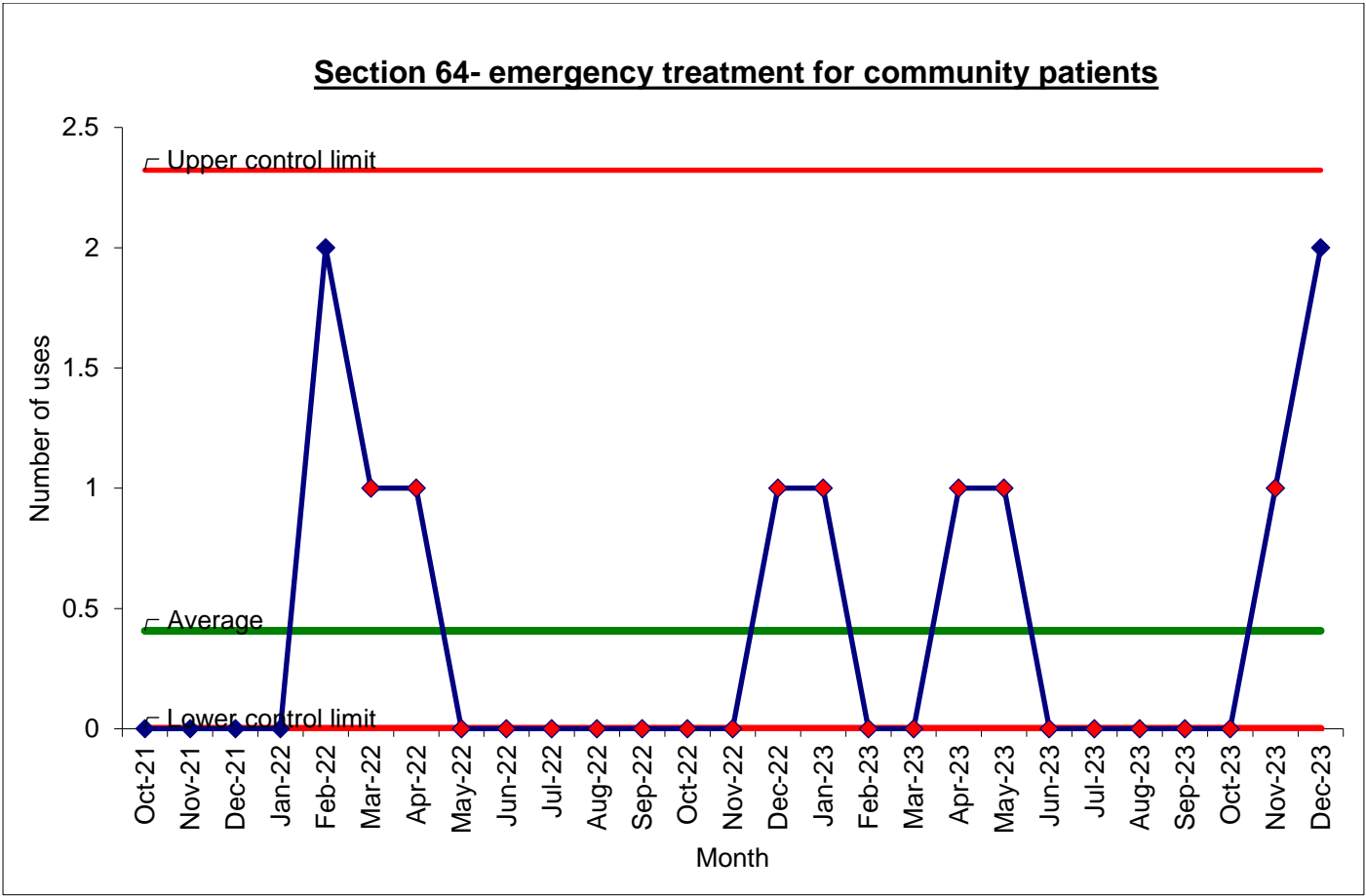
- Where the SOAD has not yet attended to certify treatment within the statutory timeframe.
- Where the SOAD has not yet certified treatment for ECT which needs to be administered as a matter of urgency.
- Where medication is prescribed outside of an existing SOAD certificate.
- Where consent has been withdrawn by the patient and the SOAD has not yet attended to certify treatment.
- Where the patient has lost capacity to consent to treatment and the SOAD has not yet attended for certification purposes.



The above chart highlights that Section 62 was used on nineteen occasions for the following reasons:

- Pending SOAD 3-month rule x 8
- Change of medication x 1
- Pending SOAD authorisation for ECT x 2
- Time limited certificate expired- waiting new SOAD authorisation x 2
- Change of capacity x 3
- Patient lacked capacity upon revoke x 1
- Pending review by regular RC x 1
- Pending review as requested by HIW x 1

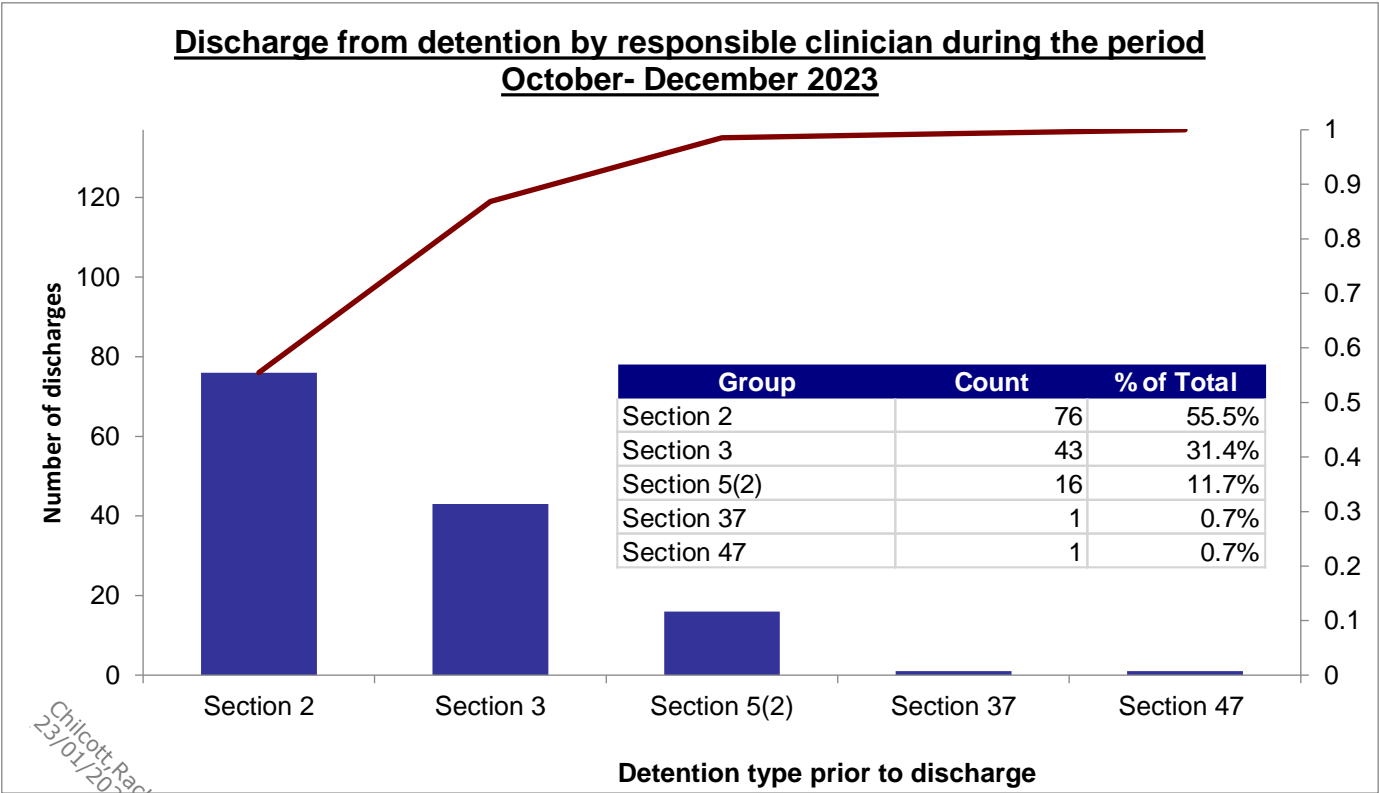
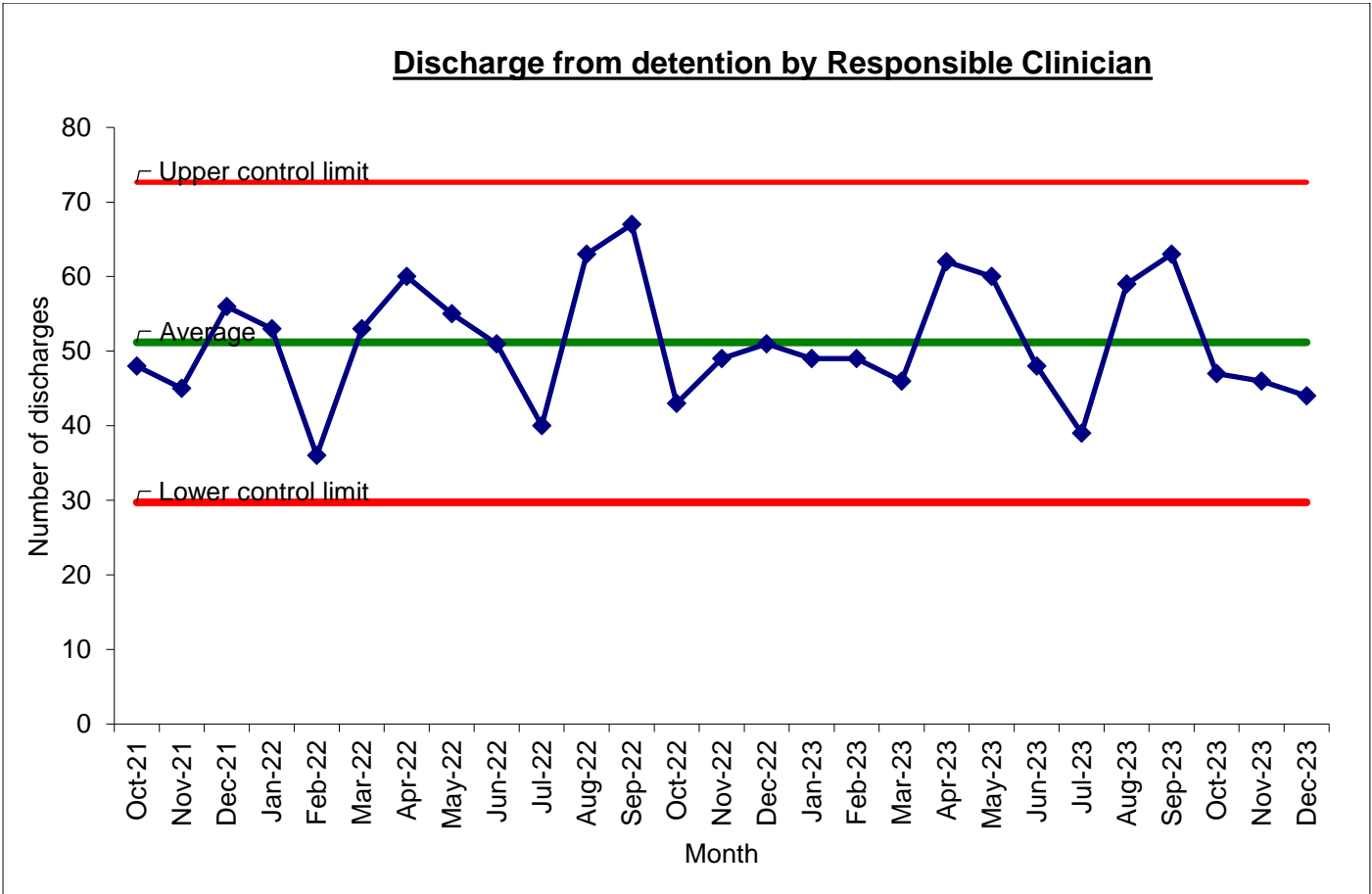
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The above chart highlights that Section 64 was used three times during this period. All uses were in relation to the one month rule and pending SOAD authorisation.

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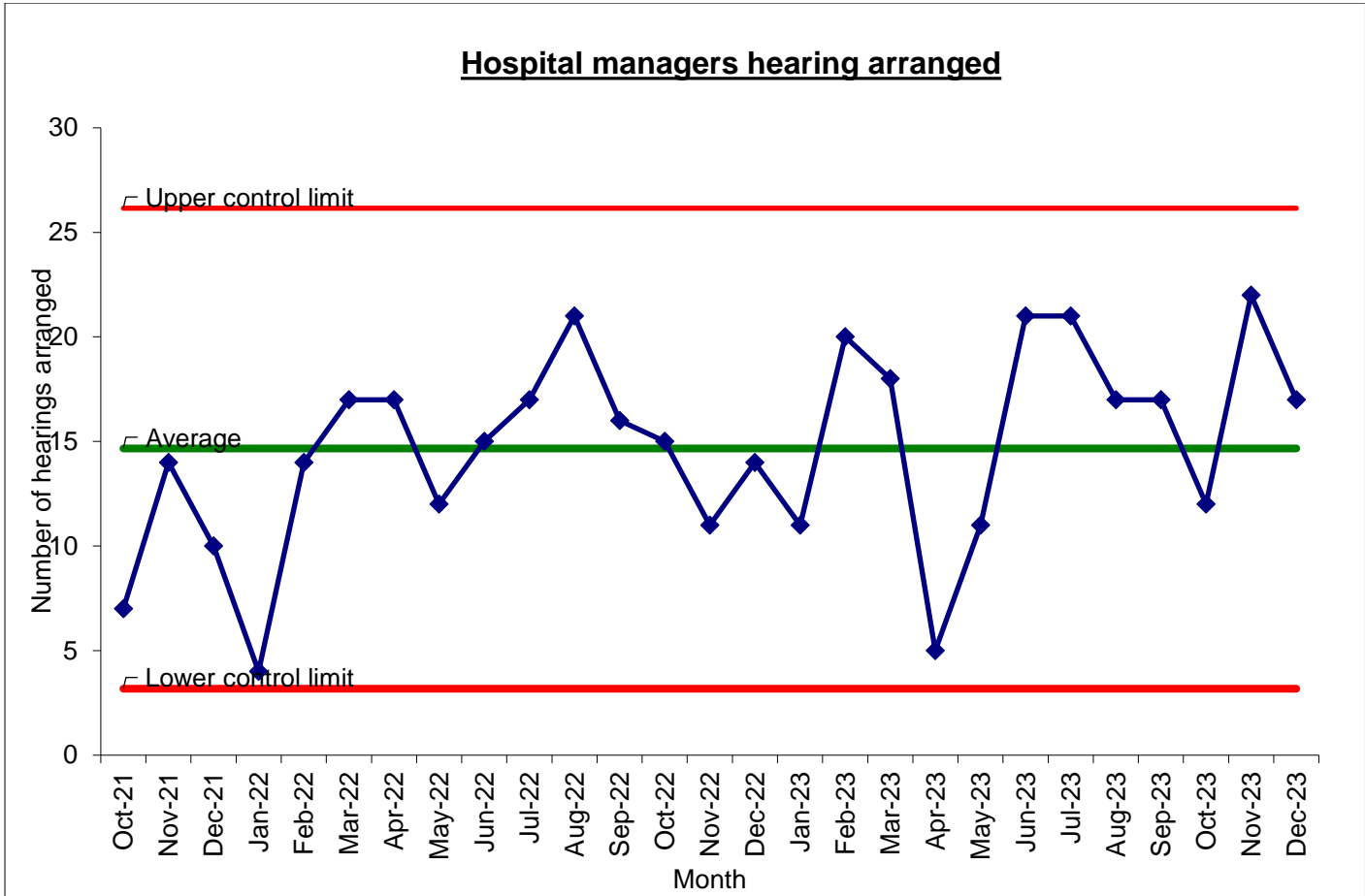
**Discharge**



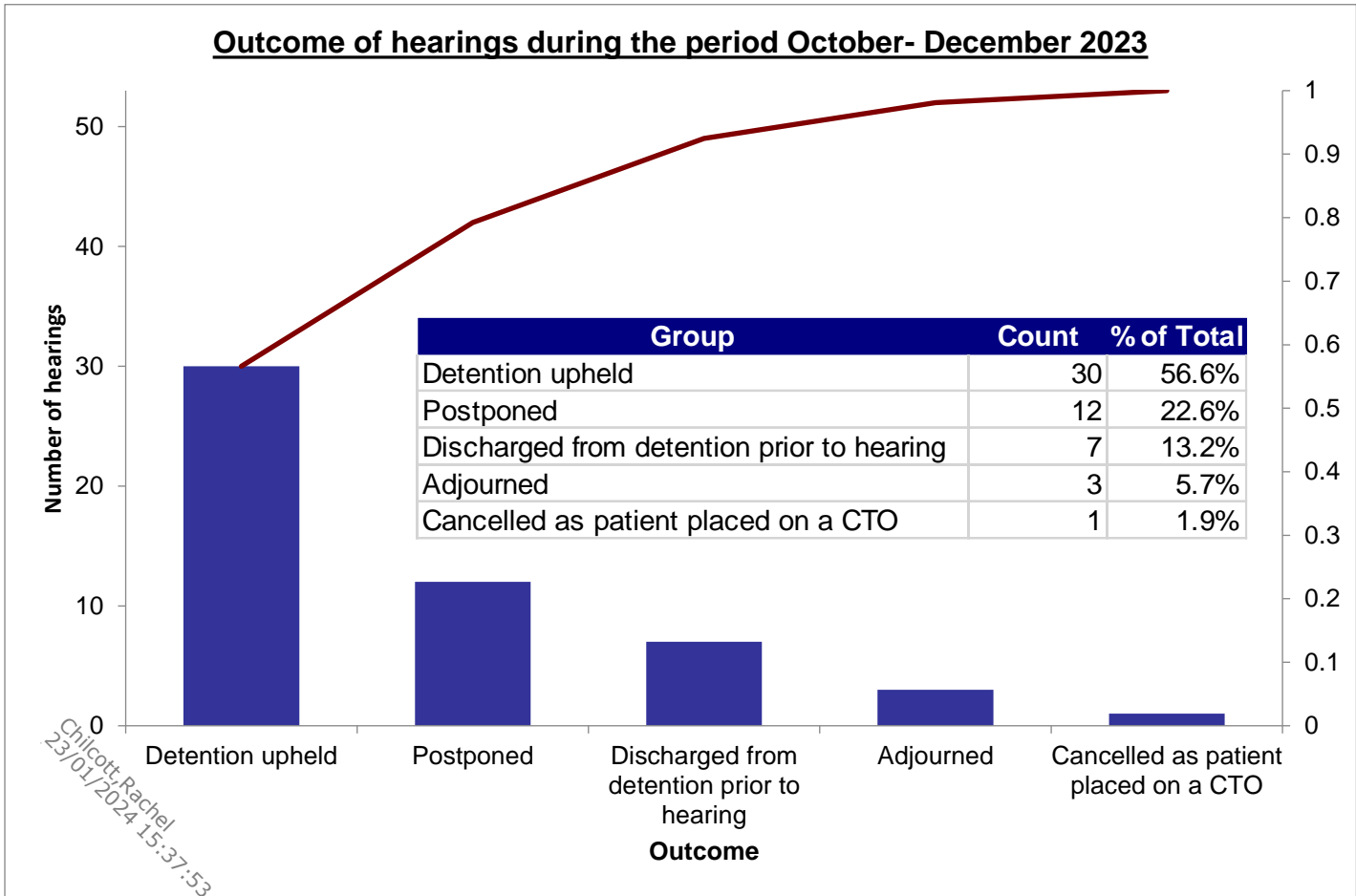
One person was discharged to Guardianship this quarter.

**Hospital Managers – Power of Discharge**

**Hospital managers hearing arranged**



**Outcome of hearings during the period October- December 2023**

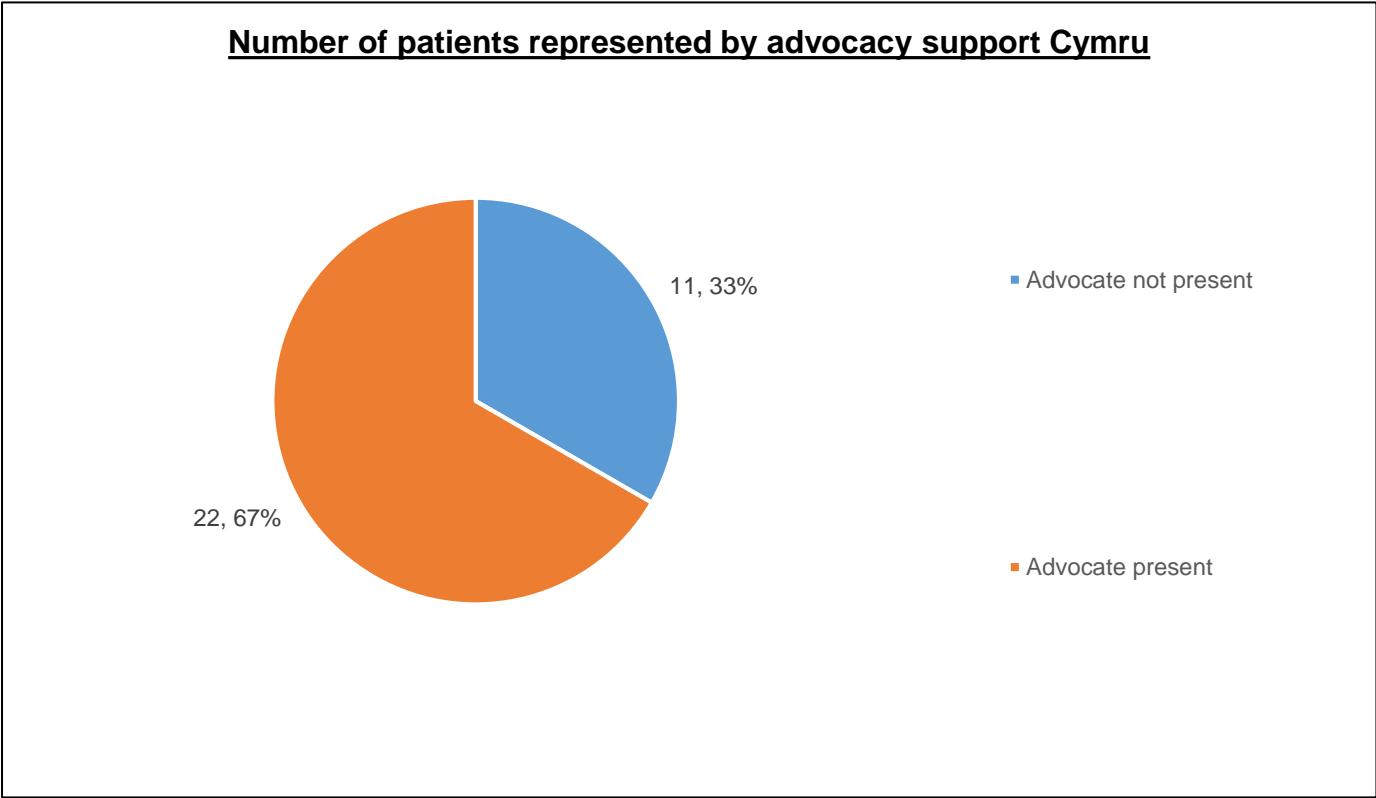


Three hearings were adjourned for the following reasons:

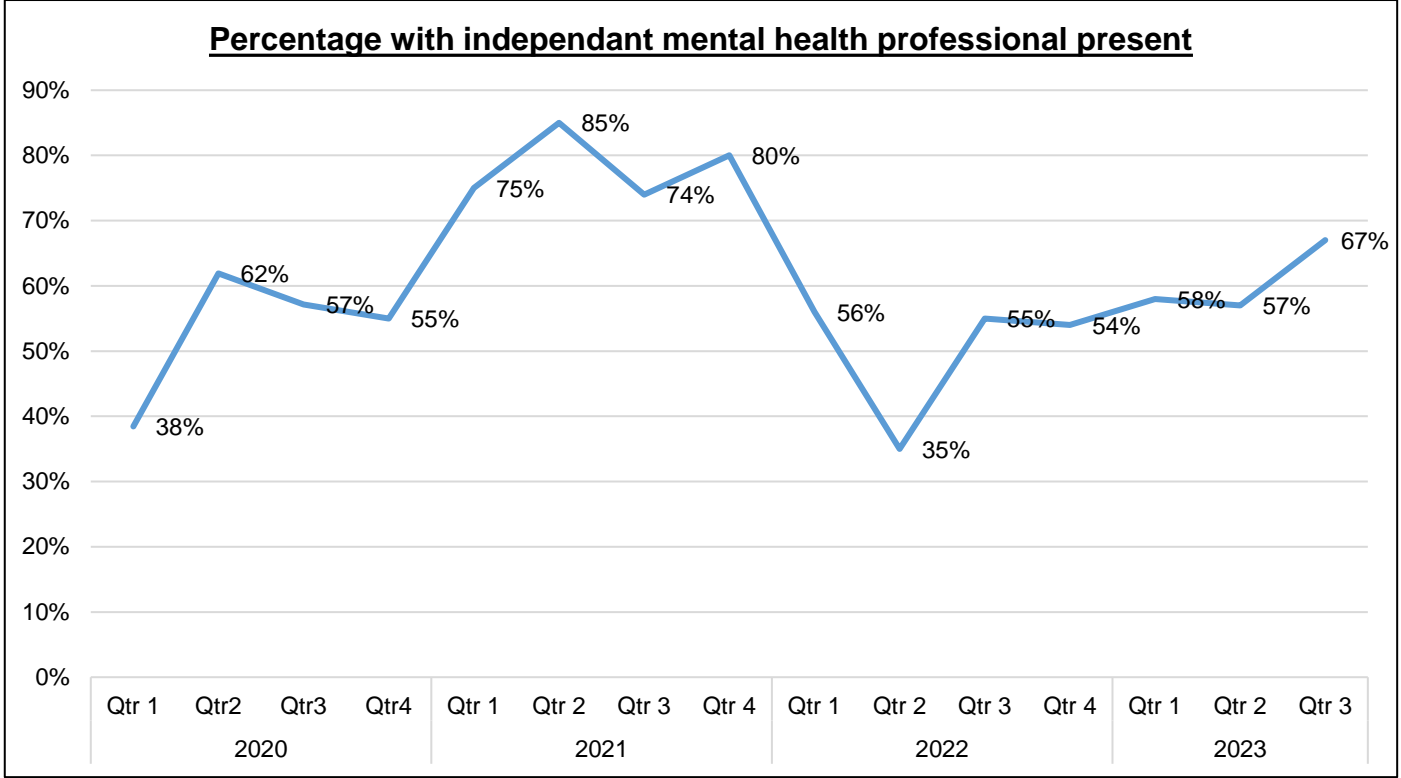
- Responsible clinician on sick leave x 1
- Patient wished to attend hearing but was not available x 1
- Patient deemed to lack capacity but had no representation at the hearing x 1

Twelve hearings were postponed for the following reasons:

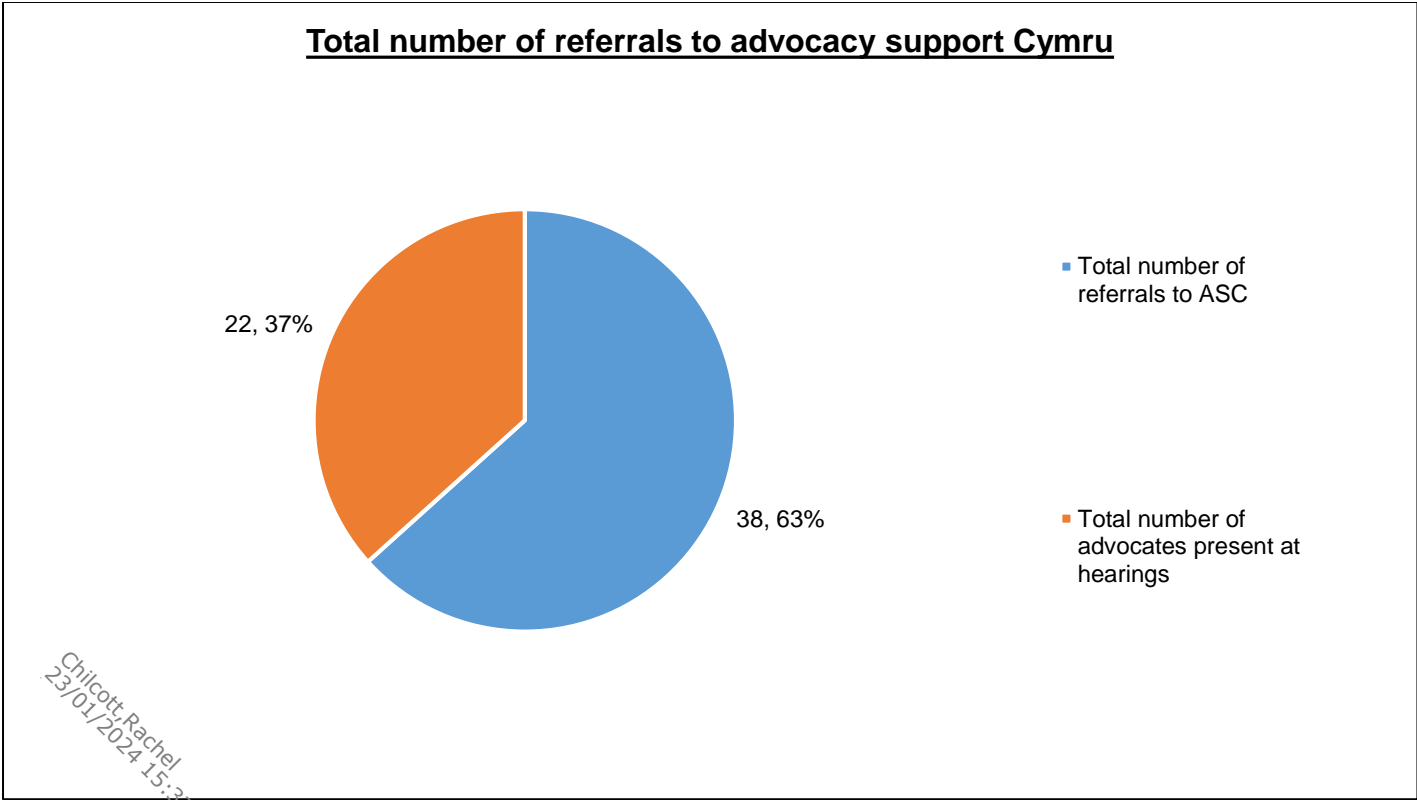
- New RC needed time to see the patient x 1
- Interpreter needed x 1
- No room available x 1
- Advocate not available x 3
- New RC not available on agreed date x 2
- Date conflicted with patient’s court appearance x 2
- Discrepancies with regard to patient’s capacity and wish to be represented x 1
- No access to records received and therefore patient had not gone through reports x 1



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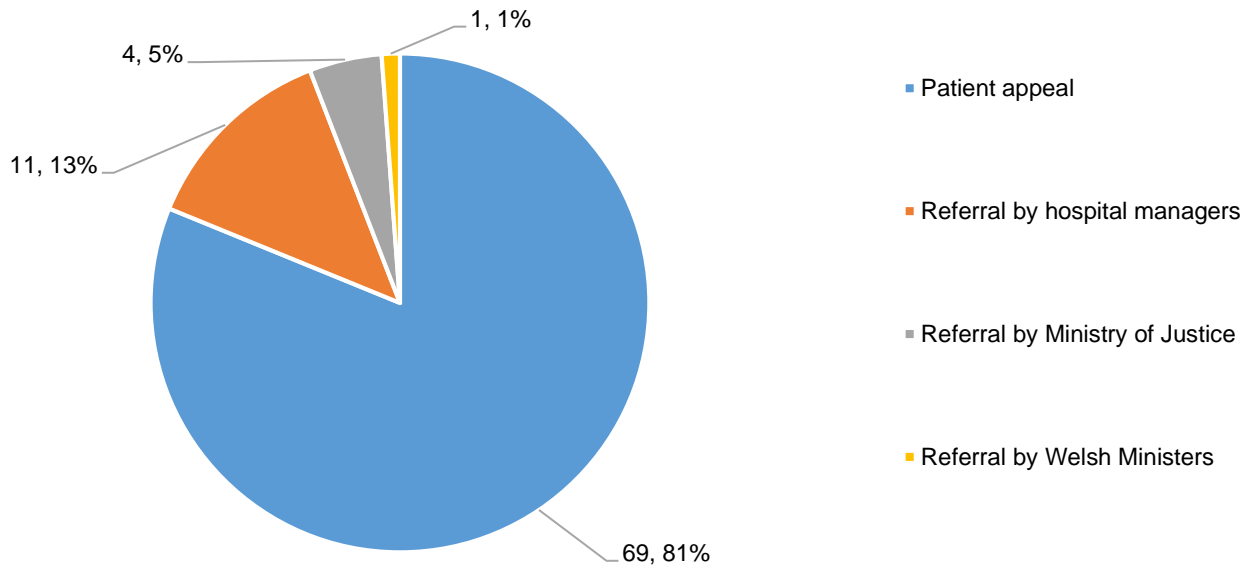
During the period the Mental Health Act Office made thirty eight referrals to Advocacy Support Cymru where the patient was deemed not to have capacity to make this decision. Twenty of the hearings of the hearings were either postponed/cancelled and therefore weren't attended by an advocate.



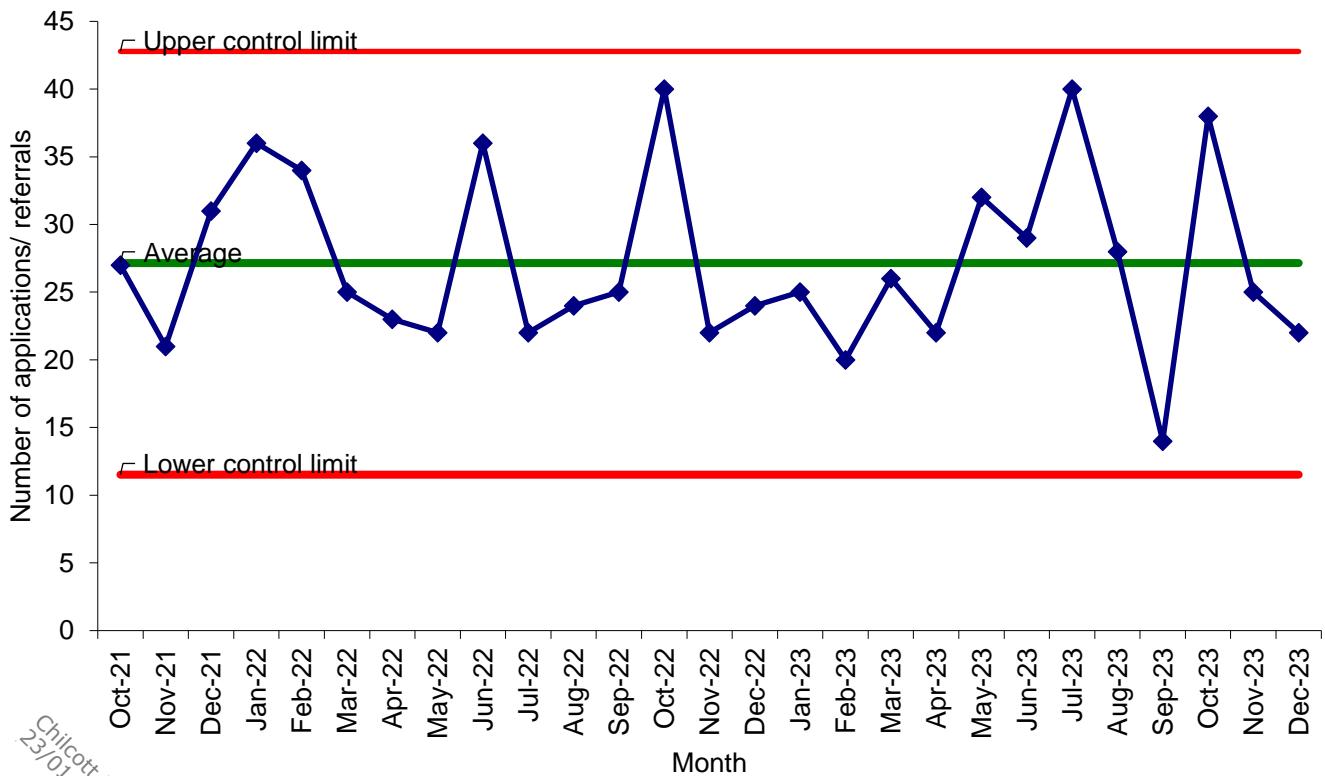
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## Mental Health Review Tribunal (MHRT) for Wales

### Source of applications to the Mental Health Review Tribunal for Wales



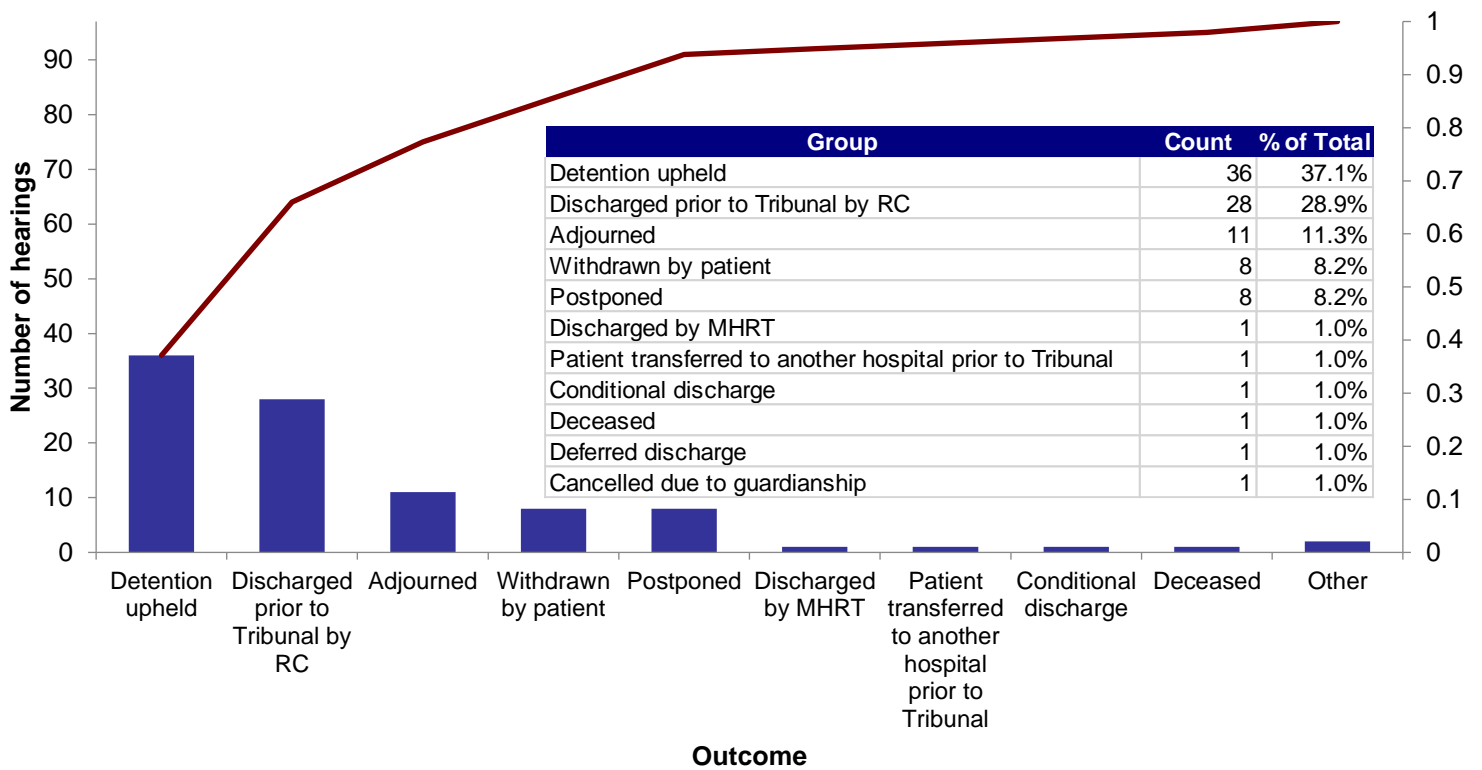
### Number of referrals and applications to the Mental Health Review Tribunal for Wales



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### Outcome of Mental Health Review Tribunals for Wales held during the period October- December 2023



Eleven hearings were adjourned for the following reasons:

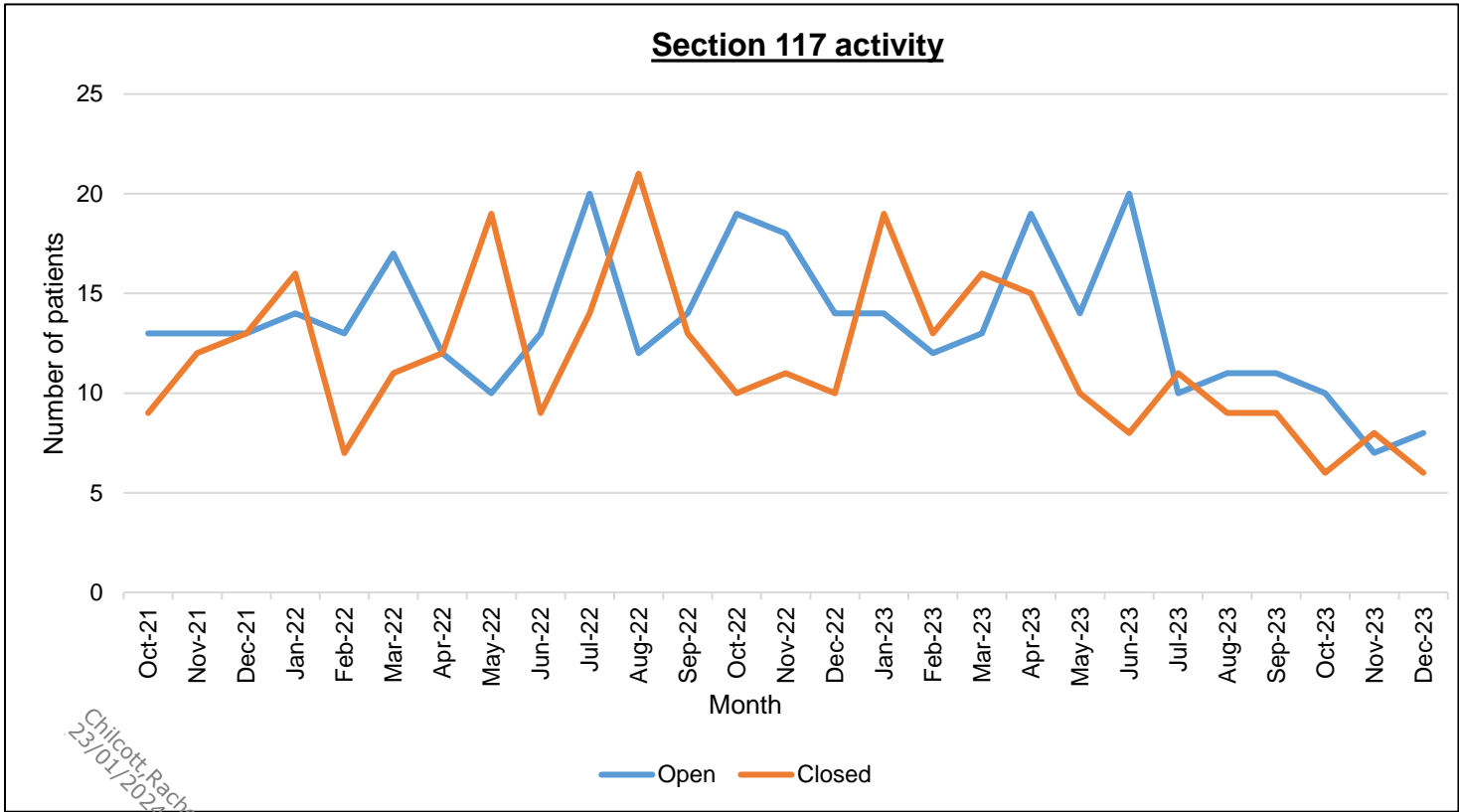
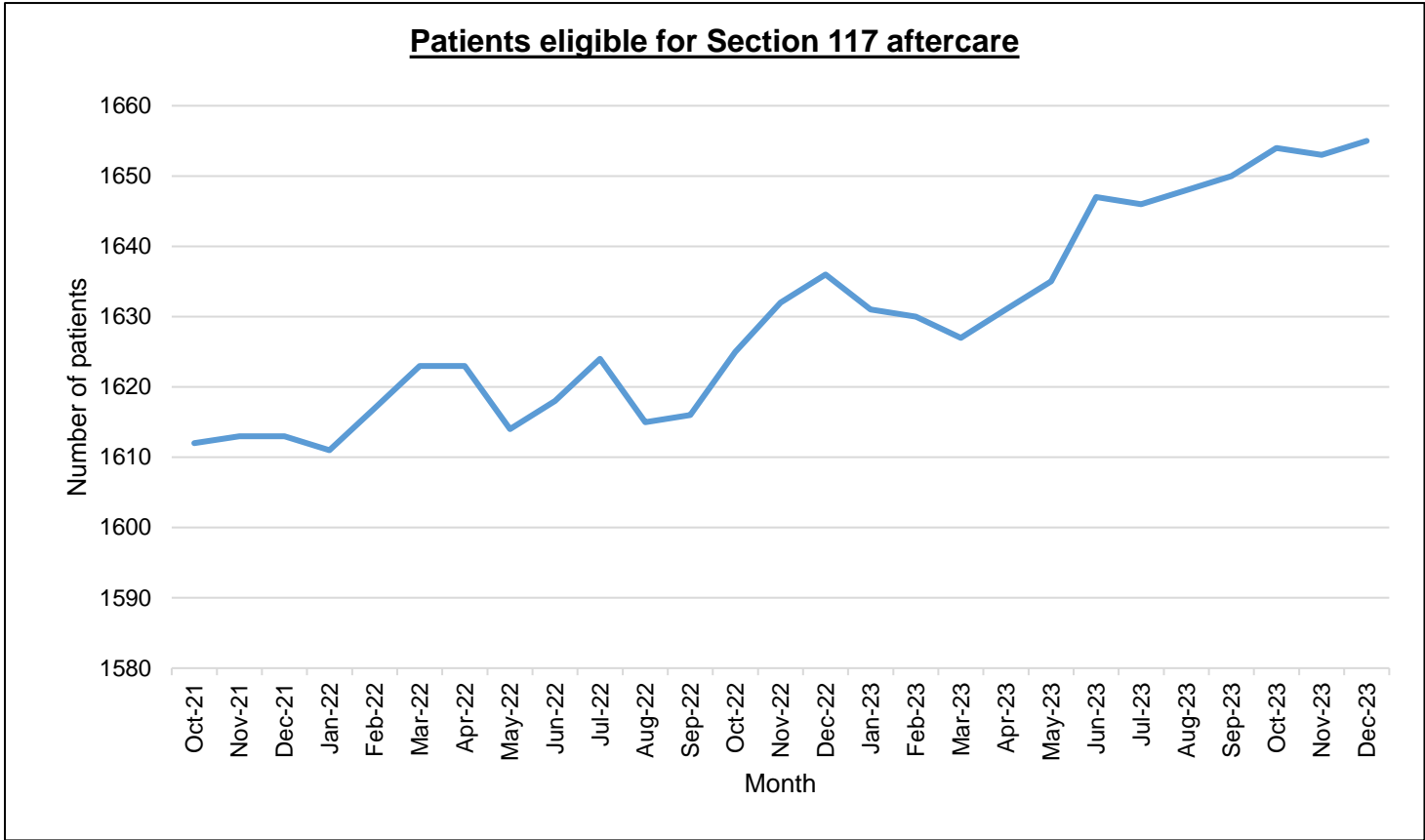
- Additional information needed x 5
- To further prepare discharge package x 2
- To appoint legal representation x 1
- Social worker unavailable x 1
- Nearest relative not invited x 1
- Medical member unavailable x 1

Eight hearings were postponed for the following reasons:

- RC availability x 7
- Social worker availability x 1

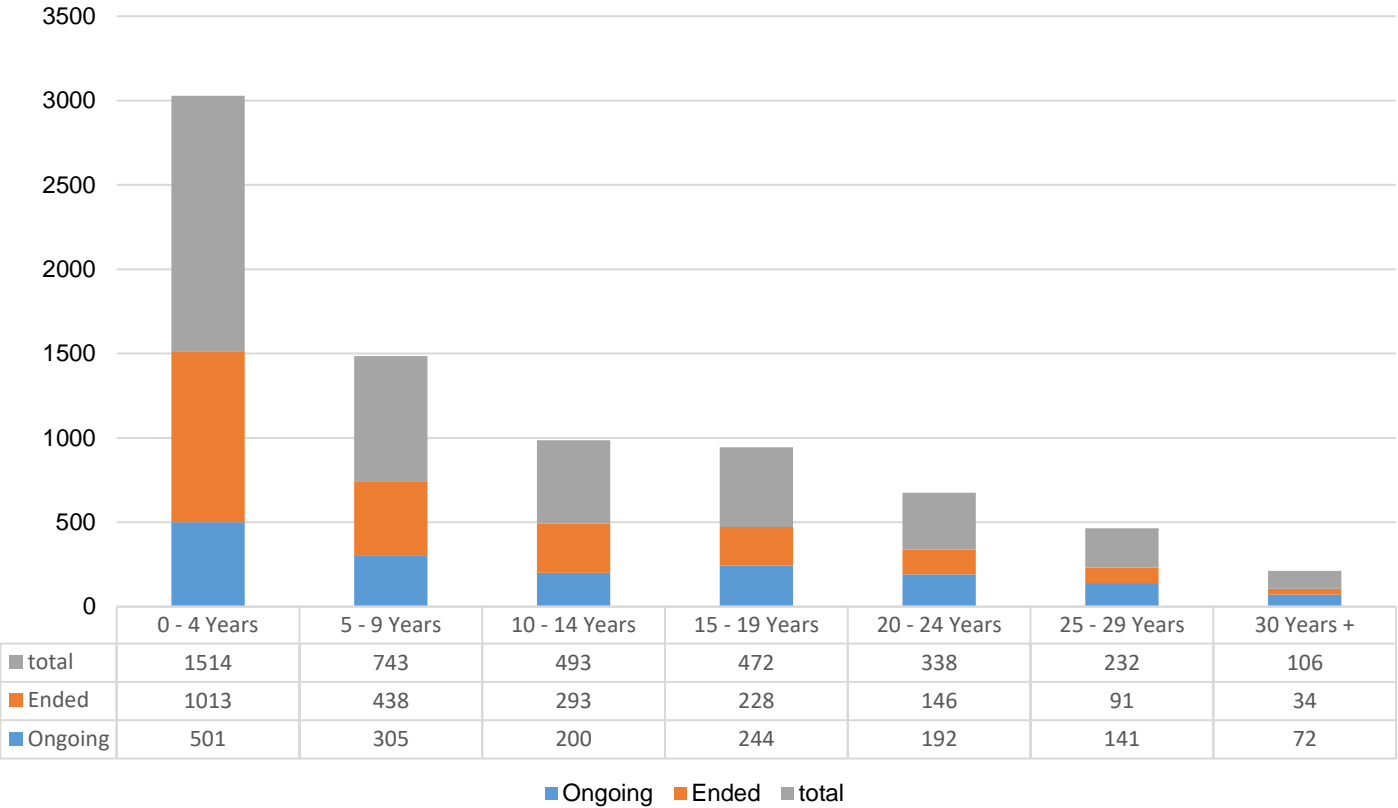
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**Section 117 Aftercare**



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**Periods of time that patients remain eligible for Section 117 aftercare**



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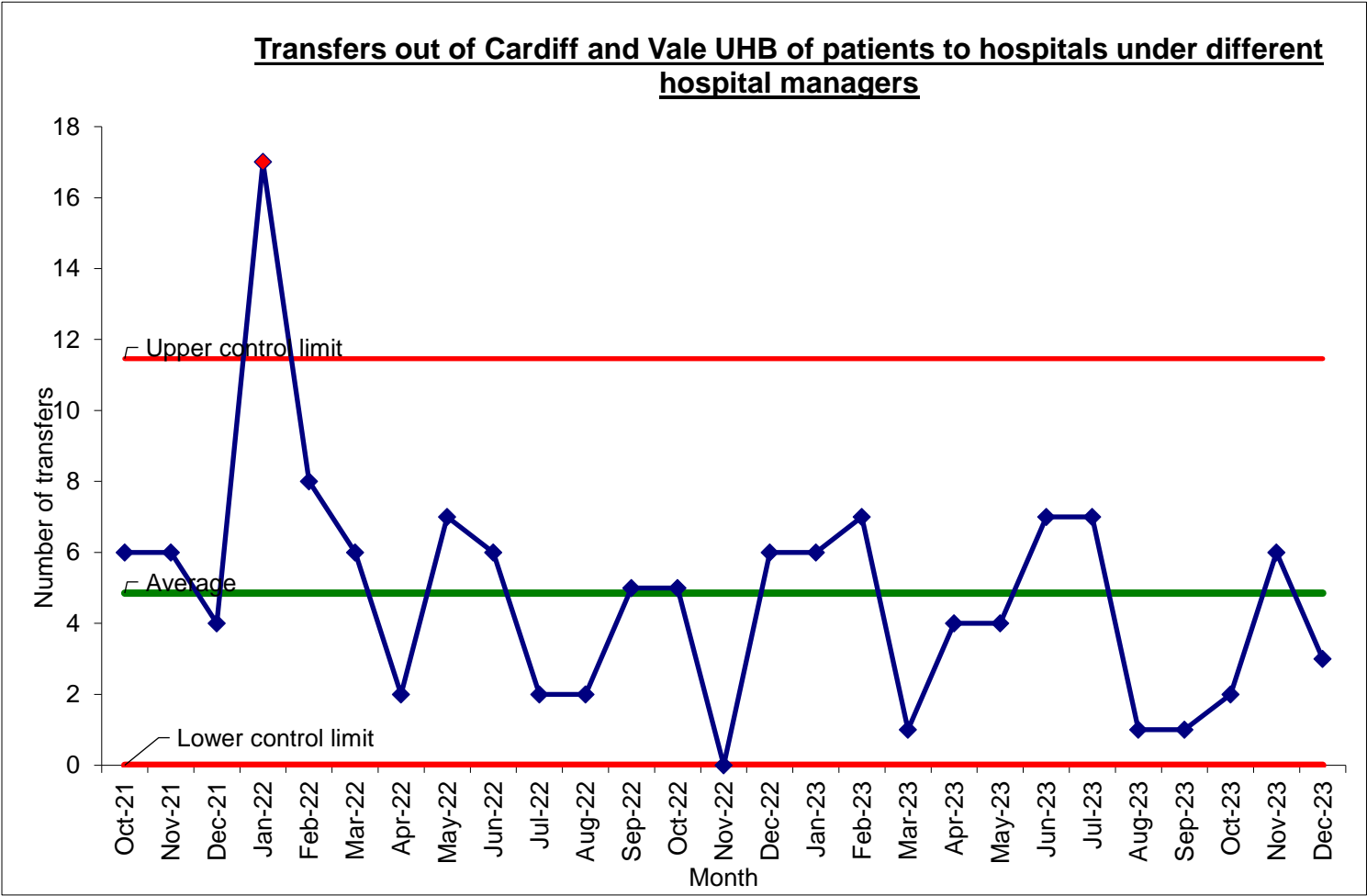
**Section 19 transfers to and from Cardiff and Vale UHB**

During the period:

Ten patients detained under Part 2 of the Mental Health Act were transferred from Cardiff and Vale UHB to a hospital under a different set of Managers for the following reasons:

- Four to PICU beds out of area
- One to specialist placements
- Five back to their home area

One patient detained under Part 3 of the Mental Health Act was transferred from Cardiff and Vale UHB to a medium secure unit.



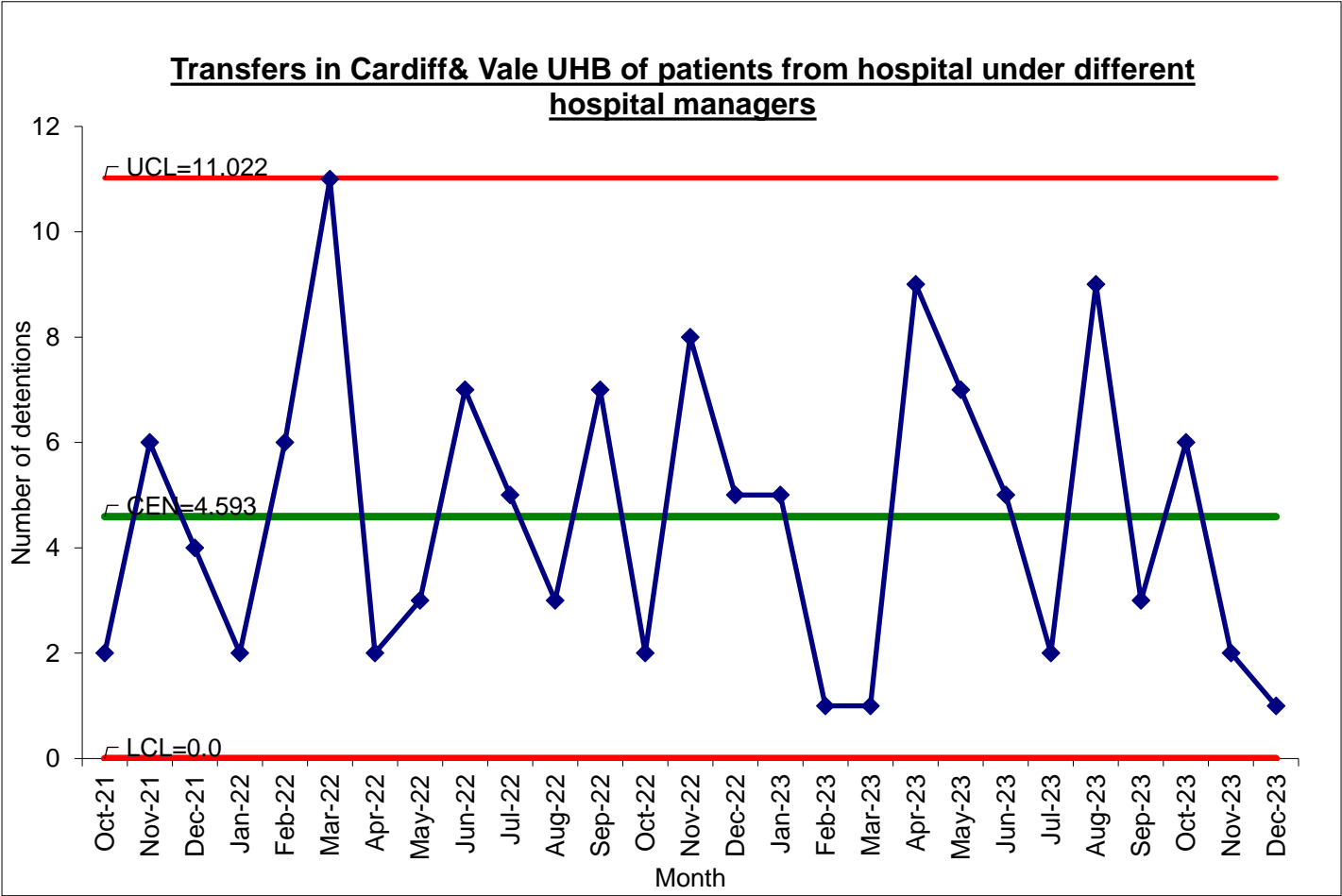
Chilcott, Rachel  
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Seven patients detained under Part 2 of the Mental Health Act were transferred into Cardiff and Vale UHB from a hospital under a different set of Managers for the following reasons:

- From out of area PICU beds to acute wards x 5
- One from out of area beds x 1
- From a CAMHS bed x 1

Two patients detained under Part 3 of the Mental Health Act were transferred into Cardiff and Vale UHB from a hospital under a different set of Managers for the following reasons:

- Step down from medium secure bed



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## **Summary of other Mental Health Activity which took place during the period**

**October- December 2023**

### **Exclusion of visitors**

Visiting on wards at Hafan Y Coed are allowed but by appointment only. This is managed through a booking in system.

### **Death of detained patients**

During the period there was one death of a detained patient.

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## Glossary of Terms

Definition	Meaning
Informal patient	Someone who is being treated for mental disorder in hospital and who is not detained under the Act.
Detained patient	A patient who is detained in hospital under the Act or who is liable to be detained in hospital but who is currently out of hospital e.g. on section 17 leave.
Section 135	Allows for a magistrate to issue a warrant authorising a policeman to enter premises, using force if necessary, for the purpose of removing a mentally disordered person to a place of safety for a period not exceeding 72 hours, providing a means by which an entry which would otherwise be a trespass, becomes a lawful act.
Section 135(1)	Used where there is concern about the well being a person who is not liable to be detained under the Act so that he /she can be examined by a doctor and interviewed by an Approved mental Health Professional in order that arrangements can be made for his/her treatment or care.
Section 135(2)	Used where the person is liable to be detained, or is required to reside at a certain place under the terms of guardianship, or is subject to a community treatment order or Scottish legislation. In both instances, the person can be transferred to another place of safety during the 72 hour period.
Section 136	Empowers a policeman to remove a person from a public place to a place of safety if he considers that the person is suffering from mental disorder and is in immediate need of care and control. The power is available whether or not the person has, or is suspected of having committed a criminal offence. The person can be detained in a place of safety initially for up to 24 hours so that he /she can be examined by a doctor and interviewed by an Approved mental Health Professional in order that arrangements can be made for his/her

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	<p>treatment or care. The detention can be extended by a further 12 hours by a Registered Medical Professional. The detained person can be transferred to another place of safety as long as the maximum time period has not expired.</p>
<p>Part 2 of the Mental Health Act 1983</p>	<p>This part of the Act deals with detention, guardianship and supervised community treatment for civil patients. Some aspects of Part 2 also apply to some patients who have been detained or made subject to guardianship by the courts or who have been transferred from prison to detention in hospital by the Secretary of State for Justice under Part 3 of the Act.</p> <p>A part 2 patient is a civil patient who became subject to compulsory measures under the Act as a result of an application for detention by a nearest relative or an approved mental health professional founded on medical recommendations.</p>
<p>Section 5(4)</p>	<p>Provides for registered nurses whose field of practice is mental health or learning disabilities to invoke a holding power for a period of not more than 6 hours by completing the statutory document required.</p> <p>During this period, the medical practitioner or approved clinician in charge, or his or her nominated deputy should examine the patient with a view to making a report under section 5(2).</p> <p>Alternatively a patient can be detained under section 2 or 3 if a full Mental Health Act assessment is achieved during the 6 hour period.</p>
<p>Section 5(2)</p> <p>Chilcott, Rachel 23/01/2024 15:37:53</p>	<p>Enables an informal inpatient to be detained for up to 72 hours if the doctor or approved clinician in charge of the patient's treatment reports that an application under section 2 or 3 ought to be made.</p> <p>The purpose of this holding power is to prevent a patient from discharging him/herself from hospital before there is time to arrange for an application under section 2 or</p>



	<p>section 3 to be made. As soon as the power is invoked, arrangements should be made for the patient to be assessed by a potential applicant and recommending doctors.</p>
Section 4	<p>In cases of urgent necessity, this section provides for the compulsory admission of a person to hospital for assessment for a period of up to 72 hours.</p> <p>An application under this section should only be made when the criteria for admission for assessment are met, the matter is urgent and it would be unsafe to wait for a second medical recommendation i.e. where the patient's urgent need for assessment outweighs the alternative of waiting for a medical recommendation by a second doctor.</p> <p>A psychiatric emergency arises when the mental state or behaviour of a patient cannot be immediately managed. To be satisfied that an emergency has arisen, there must be evidence of:</p> <ul style="list-style-type: none"> <li>• An immediate and significant risk of mental or physical harm to the patient or to others</li> <li>• And/or the immediate and significant danger of serious harm to property</li> <li>• And/or the need for physical restraint of the patient.</li> </ul> <p>Section 4 cannot be renewed at the end of the 72 hour period. If compulsory detention is to be continued, the application must either be converted into a section 2 (admission for assessment) with the addition of a second medical recommendation, in which case the patient can be detained for a maximum of 28 days under that section beginning with the date of admission under section 4 or an application for treatment under section 3 should be made.</p> <p>The Act does not provide for a section 4 to be converted into a section 3 because the criteria for admission under each of these sections are different.</p>

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<p>Section 2</p>	<p>Authorises the compulsory admission of a patient to hospital for assessment or for assessment followed by medical treatment for mental disorder for up to 28 days. Provisions within this section allow for an application to be made for discharge to the Hospital Managers or Mental Health Review Tribunal for Wales.</p> <p>If after the 28 days have elapsed, the patient is to remain in hospital, he or she must do so, either as an informal patient or as a detained patient under section 3 if the grounds and criteria for that section have been met.</p> <p>The purpose of the section is limited to the assessment of a patient's condition to ascertain whether the patient would respond to treatment and whether an application under section 3 would be appropriate.</p> <p>Section 2 cannot be renewed and there is nothing in the Act that justifies successive applications for section 2 being made.</p> <p>The role of the nearest relative is an important safeguard but there are circumstances in which the county court has the power to appoint another person to carry out the functions of the nearest relative:</p> <ul style="list-style-type: none"> <li>• The patient has no nearest relative within the meaning of the Act</li> <li>• It is not reasonably practicable to find out if they have such a relative or who that relative is</li> <li>• The nearest relative is unable to act due to mental disorder or illness</li> <li>• The nearest relative of the person unreasonably objects to an application for section 3 or guardianship.</li> <li>• The nearest relative has exercised their power to discharge the person from hospital or guardianship without due regard to the persons welfare or the public interest</li> </ul> <p>This procedure may have the effect of extending the authority to detain under section 2 until the application to the county court to appoint another person is finally disposed of.</p>
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	Patients admitted under section 2 are subject to the consent to treatment provisions in Part 4 of the Act.
Section 3	<p>Provides for the compulsory admission of a patient to a hospital named in the application for treatment for mental disorder. Section 3 provides clear grounds and criteria for admission, safeguards for patients and there are strict provisions for review and appeal.</p> <p>Patients detained under this section are subject to the consent to treatment provisions contained in Part 4 of the Act below.</p>
Community Treatment Order (CTO)	Provides a framework to treat and safely manage suitable patients who have already been detained in hospital in the community. CTO provides clear criteria for eligibility and safeguards for patients as well as strict provisions for review and appeal, in the same way as for detained patients.
Section 17E (recall of a community patient to hospital)	<p>Provides that a Responsible Clinician may recall a patient to hospital in the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where the RC decides that the person needs to receive treatment for his or her mental disorder in hospital and without such treatment there would be a risk of harm to the health or safety of the patient or to other people.</li> <li>• Where the patient fails to comply with the mandatory conditions set out in section 17B (3).</li> </ul>
Revocation	Is the rescinding of a CTO when a patient needs further treatment in hospital under the Act. If a patients' CTO is revoked the patient is detained under the powers of the Act in the same way as before the CTO was made.
Part 3 of the Act	Deals with the circumstances in which mentally disordered offenders and defendants in criminal proceedings may be admitted to and detained in hospital or received into guardianship on the order of the court. It also allows the Secretary of State for Justice to transfer

	<p>people from prison to detention in hospital for treatment for mental disorder.</p> <p>Part 3 patients can either be "restricted", which means that they are subject to special restrictions on when they can be discharged, given leave of absence and various other matters, or they can be unrestricted, in which case they are treated for the most part like a part 2 patient.</p>
Section 35	Empowers a Crown Court or Magistrates Court to remand an accused person to hospital for the preparation of a report on his mental condition if there is reason to suspect that the accused person is suffering from a mental disorder.
Section 36	Empowers a Crown Court to remand an accused person who is in custody either awaiting trial or during the course of a trial and who is suffering from mental disorder, to hospital for treatment.
Section 37	Empowers a Crown Court or magistrates' court to make a hospital or guardianship order as an alternative to a penal disposal for offenders who are found to be suffering from mental disorder at the time of sentencing.
Section 38	Empowers a Crown Court or Magistrates Court to send a convicted offender to hospital to enable an assessment to be made on the appropriateness of making a hospital order or direction.
Section 41	<p>Empowers the Crown Court, having made a hospital order under s.37, to make a further order restricting the patients discharge, transfer or leave of absence from hospital without the consent of the Secretary of State for Justice.</p> <p>Section 41 can also operate as a community section for people who were originally on section 37/41. When a section 37/41 is conditionally discharged it leaves the power of Section 41 in place. This means that the person</p>

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	can leave hospital and live in the community but with a number of conditions placed upon them.
Section 45A	This is a court sentence to hospital for someone with a mental disorder at any time after admission, if the Responsible Clinician considers that treatment is no longer required or beneficial, the person can be transferred back to prison to serve the remainder of their sentence.
Section 47	Enables the Secretary of State to direct that a person serving a sentence of imprisonment or other detention be removed to and detained in a hospital to receive medical treatment for mental disorder.
Section 48	Empowers the Secretary of State for Justice to direct the removal from prison to hospital of certain categories of unsentenced mentally disordered prisoners to receive medical treatment.
Section 49	Enables the Secretary of State for Justice to add an order restricting the patients discharge from hospital to a s.47 or s.48.
CPI Act	<p>Criminal Procedure (Insanity) Act 1964. This Act as amended by the Criminal Procedures (Insanity and Unfitness to Plead) Act 1991 and the Domestic Violence, Crime and Victims Act 2004 provides for persons who are found unfit to be tried or not guilty by reason of insanity in respect of criminal charges. The court has three disposal options:</p> <ul style="list-style-type: none"> <li>• To make a hospital order under section 37 of the MHA 1983 which can be accompanied by a restriction order under section 41.</li> <li>• To make a supervision order so that the offenders responsible officer will supervise him only to the extent necessary for revoking or amending the order.</li> <li>• Order the absolute discharge of the accused.</li> </ul>
CTO (section 37)	Once an offender is admitted to hospital on a hospital order without restriction on discharge, his or her position

	is the same as if a civil patient, effectively moving from the penal into the hospital system. He or she may therefore be suitable for CTO
Administrative scrutiny	The University Health Board has formally delegated its duty to administratively scrutinise admission documents to officers identified in the scheme of delegation. Medical scrutiny is undertaken by Consultant Psychiatrists.
	<p>Compliance with the Consent to Treatment provisions under Part 4 &amp; 4A of the Act is related to treatments requiring the patient's consent or a second opinion.</p> <p>If a patient has capacity but refuses treatment a Second Opinion Appointed Doctor (SOAD), i.e. a Registered Medical Practitioner appointed for the purposes of Part 4 of the Act can authorise treatment having consulted two Statutory Consultee's who have been professionally concerned with the medical treatment of the patient for mental disorder.</p> <p>If the patient lacks capacity to consent SOAD authorisation is required.</p>
Section 58(3)(a)	Certificate of consent to treatment (RC)
Section 58(3)(b)	Certificate of second opinion (SOAD authorisation)
Section 58A(3)(c)	Certificate of consent to treatment, patients at least 18 years of age (RC)
Section 58A(4)(c)	Certificate of consent to treatment and second opinion, patients under 18 years of age (SOAD)
Section 58A(5)	Certificate of second opinion (patients not capable of understanding the nature, purpose and likely effects of the treatment). (SOAD)
Part 4A	Certificate of appropriateness of treatment to be given to a community patient (SOAD)

<p>Section 62 – Urgent treatment</p>	<p>Where treatment is immediately necessary, a statutory certificate is not required if the treatment in question is:</p> <ul style="list-style-type: none"> <li>• To save the patient's life</li> <li>• Or to prevent a serious deterioration of the patients condition, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed</li> <li>• Or to alleviate serious suffering by the patient, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard</li> <li>• Or to prevent the patient behaving violently or being a danger to themselves or others, and the treatment represents the minimum interference necessary for that purpose, does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard.</li> </ul>
<p>Section 23</p>	<p>Provides for the absolute discharge from detention, guardianship or from a community treatment order of certain patients, by the Responsible Clinician, the Hospital Managers (or Local Social Services Authority for guardianship patients) or the patients nearest relative. The discharge must be ordered; it cannot be affected by implication.</p> <p>Section 23 does not apply to patients who have been remanded to hospital by the courts or to patients subject to interim hospital orders.</p> <p>The Secretary of State for Justice has powers to discharge restricted patients under section 42(2).</p> <p>If at any time Responsible Clinicians conclude that the criteria justifying the continued detention or community treatment order are not met, they should exercise their power of discharge and not wait until such time that the detention order or CTO is due to expire.</p>

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Section 117	Services provided following discharge from hospital; especially the duty of health and social services to provide after-care under section 117 of the Act following the discharge of a patient from detention for treatment under the Act. The duty applies to CTO patients and conditionally discharged patients as well as those who have been absolutely discharged.
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## **Right Care Right Person (RCRP)**

### **Briefing Note for Health and Social Care Partners in Wales**

#### **Right Care Right Person Approach**

When people are in mental health crisis, they need timely access to support that is compassionate and meets their needs. While there will always be cases where the police need to be involved in responding to someone in mental health crisis (for example, where there is a real and immediate risk to life or serious harm, or where a crime or potential crime is involved), police are increasingly involved when they are not the most appropriate agency to respond, and they are not able to handover care to a more appropriate professional in a timely manner. This impacts on the ability of the police to carry out their other duties effectively, and importantly, can result in people with mental health needs experiencing greater distress and having poorer experiences of the mental health care pathway.

The strategic 'Right Care, Right Person' approach provides a framework for assisting police with decision making about when they should be involved in responding to reported incidents involving people with mental health needs.

At the centre of the RCRP approach is a threshold to assist police in making decisions about when it is appropriate for them to respond to incidents, including those which relate to people with mental health needs. The threshold for a police response to a mental health-related incident is:

- to investigate a crime that has occurred or is occurring; or
- to protect people, when there is a real and immediate risk to the life of a person, or of a person being subject to or at risk of serious harm

Where it is appropriate for the police to be involved in responding, this will continue to happen, but the police should only be involved for as long as is necessary, and in conjunction with health and/or social care services.

#### **RCRP Implementation Plans for Wales**

All four Police Forces in Wales are planning to implement RCRP. Under the RCRP approach there are four areas where changes will be made in phases over a 24-month period from January 2024 to December 2025.

- Phase 1: Concerns for welfare of people
- Phase 2: AWOL and walkouts of people with mental health needs from other health facilities
- Phase 3: Transportation in police vehicles
- Phase 4: Handover of S136s and voluntary mental health patients

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### **Partnership Working to Implement Right Care, Right Person in Wales**

While police forces in Wales will ultimately determine the timeframe for implementing the RCRP approach locally, it should be established following engagement with health, social care and other relevant partners.

It is crucial that at the heart of planning and implementing RCRP for people with mental health needs, there is a focus on ensuring safety is maintained and people in mental health crisis are not left without support. This means the approach to RCRP implementation for people with mental health needs should be planned and developed jointly through cross-agency partnerships before changes to responses are introduced. Once implemented, locally developed arrangements should be monitored and reviewed over time.

Ciara Rogers

National Director for Mental Health

1 December 2023

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Report Title:	Supreme Court Judgment - Section 117 of the Mental Health Act Covering report			Agenda Item no.	9.3	
Meeting:	Mental Health & Capacity Legislation Committee			Meeting Date:	30 <sup>th</sup> January 2024	
Status:	For Discussion		For Assurance		For Approval	For Information X
Lead Executive:	Chief Operating Officer					
Report Author (Title):	Dan Crossland Director of Operations Mental Health Clinical Board					

**Background and current situation:**  
The judgment, “*R (on the application of Worcestershire County Council) (Appellant) v Secretary of State for Health and Social Care (Respondent)*” 2023 has the potential to impact resources in Cardiff and the Vale significantly.  
The judgment relates to the determination of responsibility for providing and paying for “after-care services” under Section 117 of the Mental Health Act 1983. This section places a joint duty on Health Authorities and Local Authorities to provide services for people who have left hospital following compulsory detention for treatment for mental disorder under qualifying sections of the Mental Health Act 1983.

An example of the ruling is as follows:  
Patient is subject to Section 117 in UHB A. UHB A commissions a private Mental Health placement in the locality of UHB B. The placement breaks down and the patient is admitted to a hospital in UHB B under Section 2 of the Mental Health Act 1983. The patient remains in hospital and is unable to be discharged after 28 days. The patient is transferred to a Section 3 and remains in hospital. The patient improves and is ready for discharge to their placement. The placement commissioning is now the responsibility of UHB B as does aftercare responsibility should the patient wish to return back to UHB A.

The key impacts are summarised below.

**Executive Director Opinion/Key Issues to bring to the attention of the Board/Committee:**

Nationally:

- The judgment has the potential to impact resources in Cardiff and the Vale significantly.
- Changes to the definitions of ‘Ordinary Residence’.
- Consent to move to the new area no longer regarded.
- Cardiff and Vale will be disproportionately impacted.
- Choice of patient to return home likely to be impacted.
- ‘Perverse incentives’ to moving placing service users out of area with sub-therapeutic support.

**Assessment and Risk Implications (Safety, Financial, Legal, Reputational etc.):**

The judgment has significant financial implications for UHBs and Local Authorities.

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## Recommendation:

The Committee are requested to:

**NOTE** the potential impact of the ruling.

### Shaping our Future Wellbeing Strategic Objectives

*This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report*

1. Reduce health inequalities	X	6. Have a planned care system where demand and capacity are in balance	X
2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn	
3. All take responsibility for improving our health and wellbeing	X	8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X
4. Offer services that deliver the population health our citizens are entitled to expect	X	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	X
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

### Five Ways of Working (Sustainable Development Principles) considered

*Please tick as relevant, click [here](#) for more information*

Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
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**Equality and Health Impact Assessment Completed:**

Not Applicable



Report Title:	Healthcare Inspectorate Wales Annual report 2022-2023. Covering report			Agenda Item no.	9.4
Meeting:	Mental Health & Capacity Legislation Committee			Meeting Date:	30 <sup>th</sup> January 2024
Status:	For Discussion	For Assurance	For Approval	For Information	X
Lead Executive:	Chief Operating Officer				
Report Author (Title):	Dan Crossland Director of Operations Mental Health Clinical Board				

**Background and current situation:**  
Healthcare Inspectorate Wales (HIW) is the independent inspectorate of the NHS and regulator of independent healthcare in Wales. The Annual Report outlines the key findings from the regulation, inspection, and review of healthcare services in Wales. During the year, 20 Mental Health inspections by HIW took place across Wales and are summarised in the report on pages 22-24 [Healthcare Inspectorate Wales Annual Report 2022-2023 \(hiw.org.uk\)](https://hiw.org.uk).

The key themes are summarised below.

**Executive Director Opinion/Key Issues to bring to the attention of the Board/Committee:**

Nationally:

- Immediate assurance used in Mental Health across Wales represents 35% of all HIW immediate assurance.
- Quality of mental health interactions was high across Wales.
- Managing violence and aggression training lacking in some areas inspected.
- Records do not always evidence restraint and observation charts not always up to date.
- Difficulties accessing services for service users or people wanting to access MH services across Wales.
- Highly complex systems make timely and effective care more challenging.
- System flow between services impacts on care.

**Assessment and Risk Implications (Safety, Financial, Legal, Reputational etc.):**

Quality impact: Complex systems across health boards impact on care.

Reputational: Training compliance for violence and aggression and completion of risk assessment and care and treatment planning paper work is a national issue.

Safety and reputation: 40 recommendations were made relating to a review of discharge arrangements in Cwm Taf. Cardiff and Vale have responded to this with an auditable action plan.

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## Recommendation:

### The Committee are requested to:

**NOTE** the content of the HIW Mental Health Hospitals, Learning Disability Hospitals and Mental Health Act Monitoring Annual report 2020-2021.

### Shaping our Future Wellbeing Strategic Objectives

*This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report*

1. Reduce health inequalities		6. Have a planned care system where demand and capacity are in balance	
2. Deliver outcomes that matter to people		7. Be a great place to work and learn	
3. All take responsibility for improving our health and wellbeing		8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	
4. Offer services that deliver the population health our citizens are entitled to expect		9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

### Five Ways of Working (Sustainable Development Principles) considered

*Please tick as relevant, click [here](#) for more information*

Prevention		Long term		Integration		Collaboration		Involvement	
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### Equality and Health Impact Assessment Completed:

Yes / No / Not Applicable  
*If "yes" please provide copy of the assessment. This will be linked to the report when published.*



Report Title:	Mental Health Measure (Wales) 2010 incl. Part 2				Agenda Item no.	10.1	
Meeting:	Mental Health Legislation and Mental Capacity Act Committee		Public	X	Meeting Date:	30 <sup>th</sup> January 2024	
			Private				
Status <i>(please tick one only):</i>	Assurance	X	Approval		Information		
Lead Executive:	Chief Operating Officer						
Report Author (Title):	Director of Operations, Mental Health						
Main Report							
Background and current situation:							

The UHB Mental Health Measure performance is reported to and monitored by the Welsh Government on a monthly basis, with reports back to the UHB Performance Monitoring Committee. For the information of the Committee the Delivery Unit has restarted its 90 day cycle of mental health services reviews across Wales to discuss performance against the various mental health specific targets. Cardiff and Vale has been visited with no exceptional issues to report.

The Mental Health (Wales) Measure 2010 (the Measure), is a National Assembly for Wales law that has similar legal status to an Act of Parliament. The Measure introduces a number of important changes to the assessment and treatment of people with mental health problems in Wales. Parts 1 to 4 of the Measure set the main legislative requirements relating to Mental Health service provision and are supported by subordinate legislation and guidance

Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

Parts 1 to 4 of the Measure set the main legislative requirements relating to Mental Health service provision and are supported by subordinate legislation and guidance

Assessment and Risk Implications (Safety, Financial, Legal, Reputational etc.):

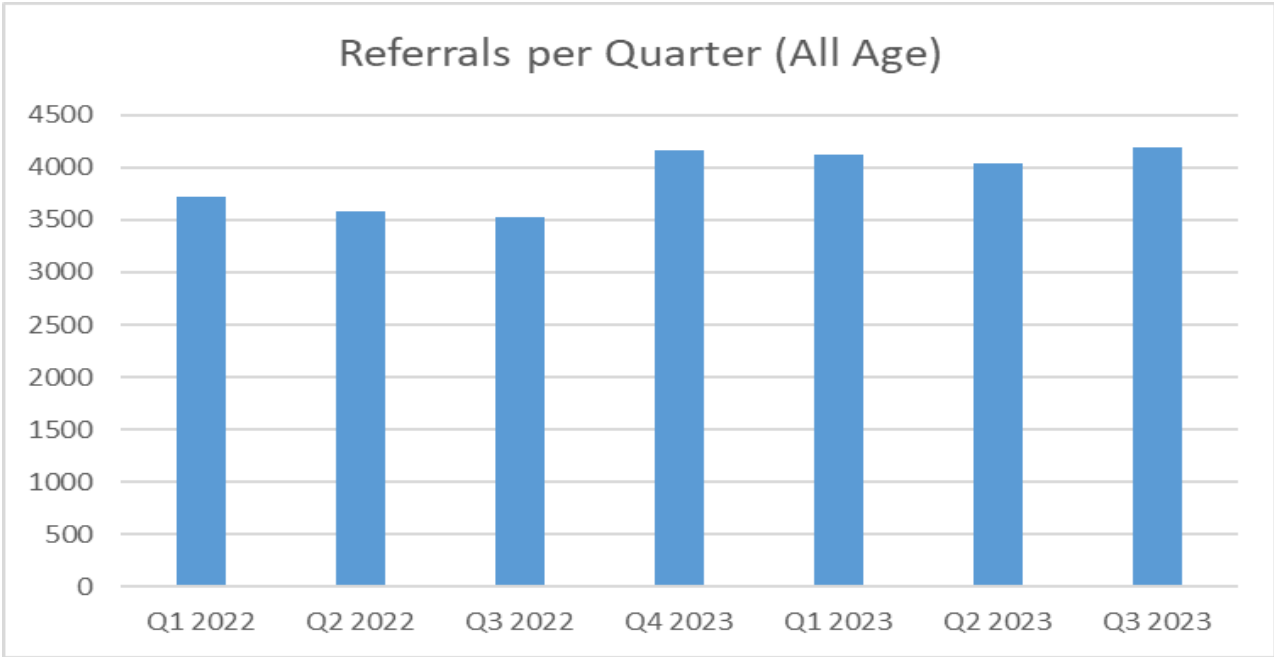
For Parts 1, 2, 3 & 4 of the Measure, local activity and compliance information is collated and submitted to WG via standard reporting templates.

Part 1: PMHSS

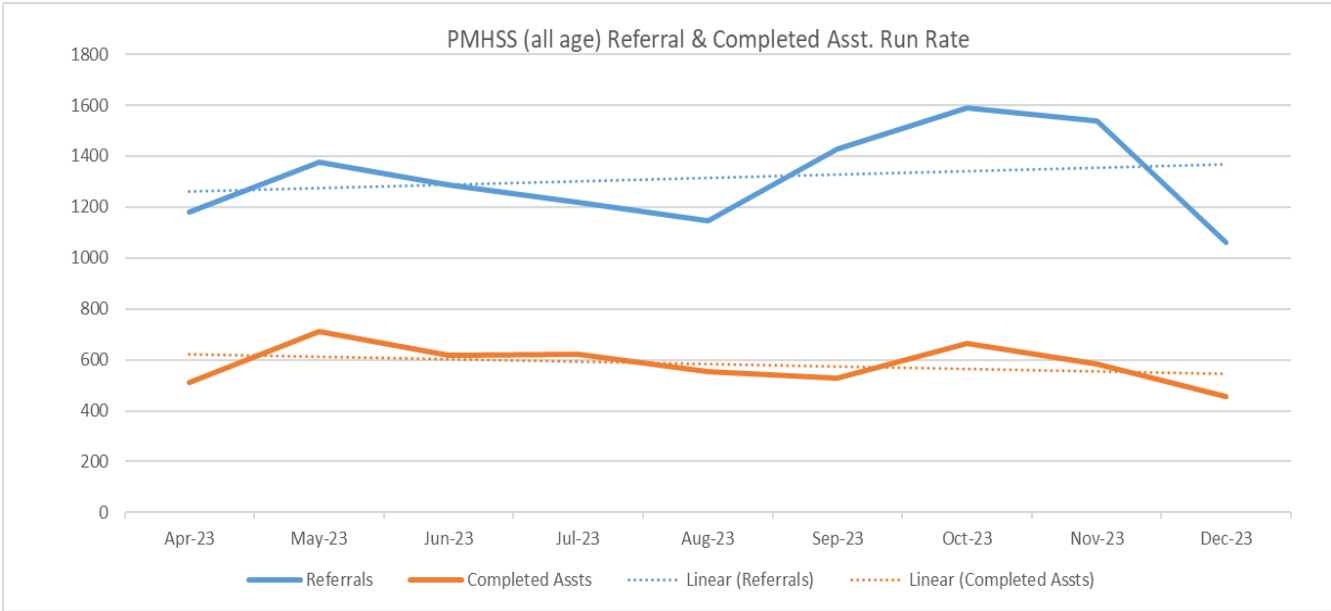
**Part 1a – target: 28-day referral to assessment compliance target of 80% (Adult)**  
Part 1a is at 50.6% compliance on 15/1/24. This is an improving picture as compliance on 11/1/24 was 19.7%.  
The average wait is currently 28.3 days with the longest wait 42 days.  
Trajectory is improving but the continual upward trajectory of referrals (see Graph 1), with year on year increases at in spring and autumn (see Graph 2) is reflected in the fragility of compliance subsequent to these periods as the wait time increases (see Graph 3). Trajectories to restore compliance have been modelled with additional staffing complements of 1,2,3 and 4 additional whole time equivalents to better understand what additionality is required to sustain compliance.

The last 12 months shows an increase of 10.5% in referrals compared to the previous year. The average shortfall of assessments required per month is 78 (which equates to 2.2 whole time equivalents, presuming no growth).

Graph 1:



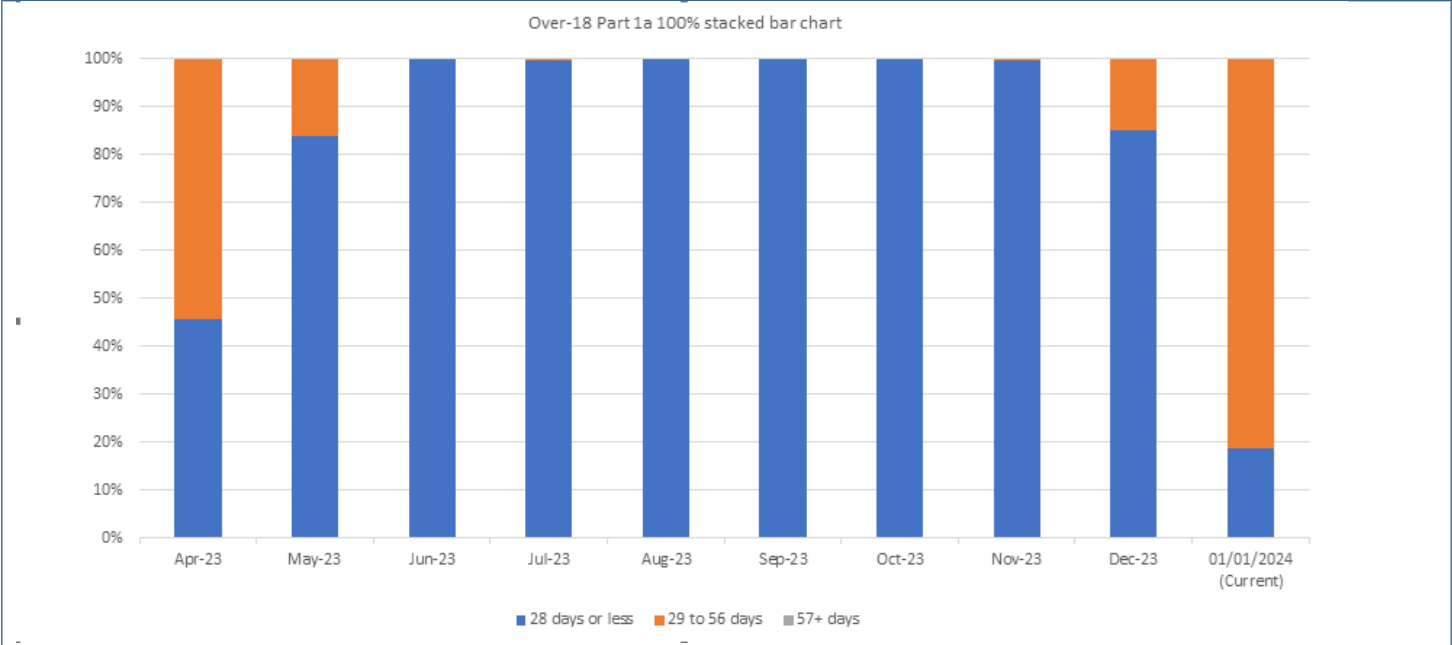
Graph 2



Graph 3

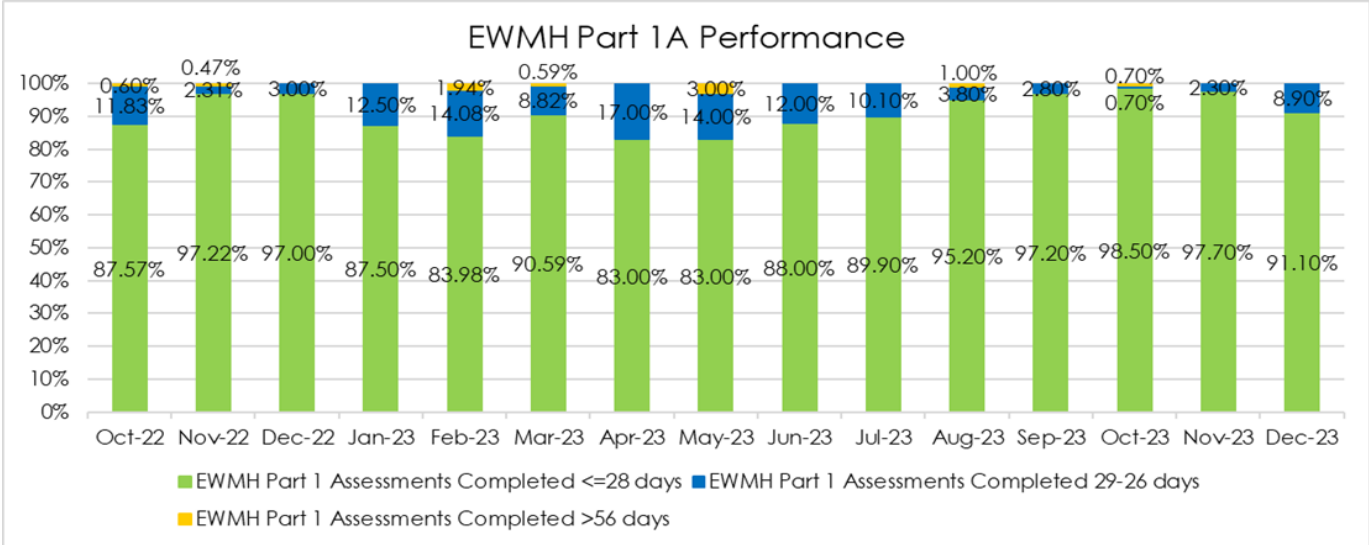
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**Part 1a – target: 28-day referral to assessment compliance target of 80% (Children & Young People)**

**Graph 4**

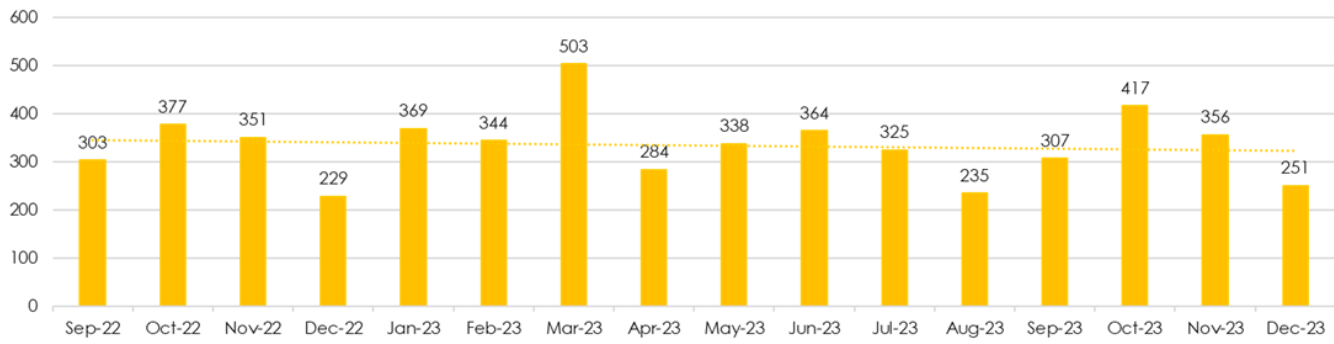


The service continues to maintain compliance with the target. The implementation of the Assessment Team has had a significant impact on the service’s ability to meet the incoming demand and proactive work is ongoing with regards to monitoring the capacity of the team in line with the incoming demand and our seasonal peaks. Similarly, the implementation of the Single Point of Access and the joint triage with Local Authority has ensured that children and young people are being appropriately referred into services that will best meet their needs.

The average wait for assessment currently fluctuates between 3-4 weeks.

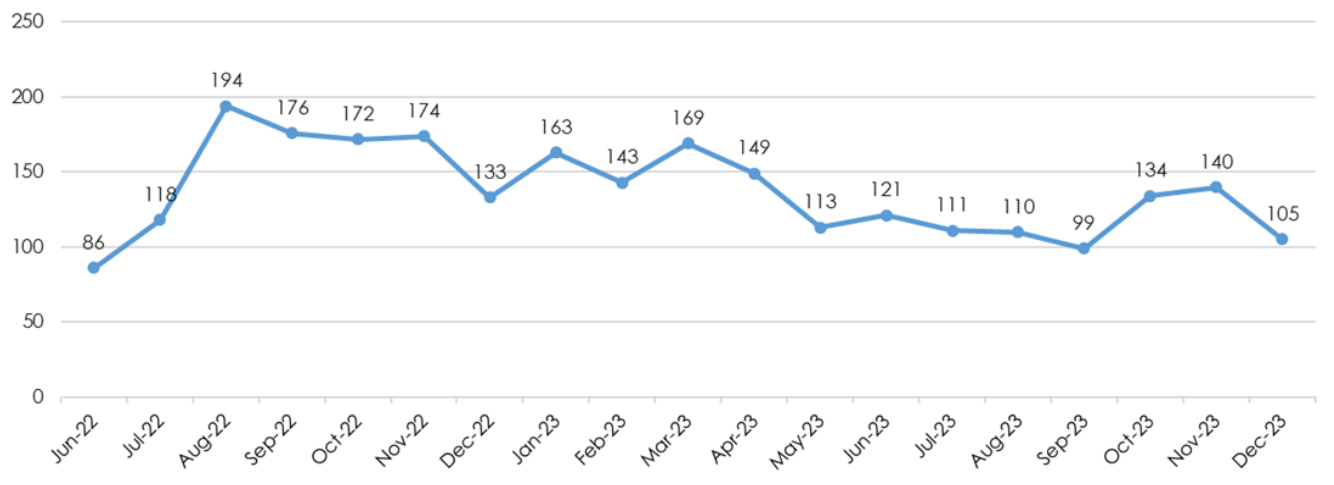
**Graph 5**

EWMH No. Referrals



Graph 6

EWMH - No. Part 1A Assessments



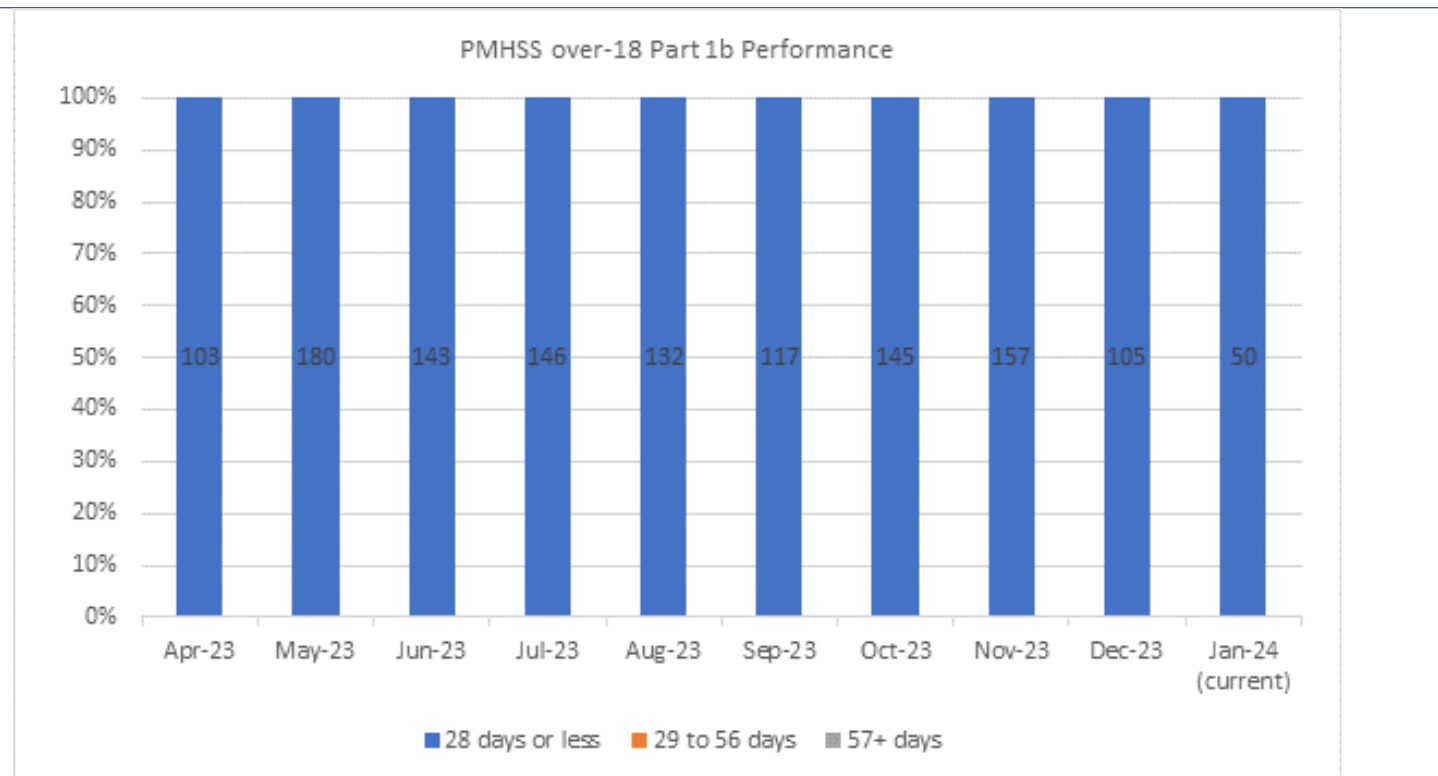
**Part 1b – 28 day assessment to intervention compliance target of 80% (Adult)**

Part 1b remains 100% compliant (Graph 7). The same professionals delivering Part 1a assessments also deliver the interventions in Part 1b. The challenge is to ensure that the delivery of interventions continues while recovering Part 1a. The team are training in the new Stress Control course which was procured for delivery in PMHSS. This is a large-scale educative intervention where lecture halls can be used to deliver an evidence-based, high quality course to high numbers of people. This open access course is evaluated using clinical outcome measures (CORE 10) for attendees.

The PMHSS team continue to deliver group interventions for:

- Understanding Me
- Living Life to the Full
- Behavioural Activation
- ACT for Wellbeing
- Anger Awareness

Graph 7:



**Part 1b – 28-day assessment to intervention compliance target of 80% (Children & Young People)**

There are ongoing issues with the achievement of the Part 1B target which is largely as a result of the volume of assessments which have been undertaken through the previous waiting list initiatives where the focus had been on the external waiting list. There has also been an additional impact as a result of the significant increase in referrals for assessment in March 23 and November 23 with increased numbers requiring follow on intervention.

The service has had ongoing capacity issues as a result of vacancies and sickness. Due to staff turnover as well as the bulk of the waiting list initiative and Healios intervention coming to an end, a number of young people on these caseloads remained in the service requiring treatment to be completed – this was prioritised, thus delaying treatment starts for those on the waiting list.

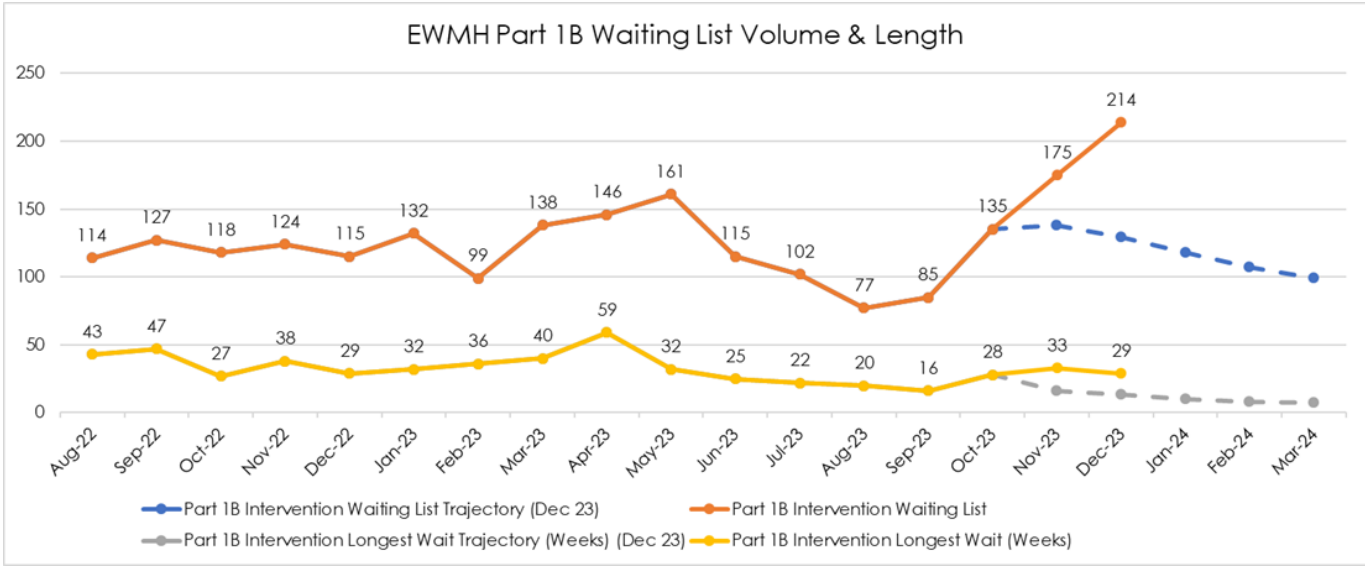
Additionally, over the last quarter, the number of agency staff within the service has reduced due to one member of staff going on maternity leave and another obtaining a permanent position. Additionally, during the last quarter there has been a turnover of staff with an 8a Psychologist post becoming vacant and three members of staff have unfortunately gone on long-term sick leave, which is further impacting on performance.

A full demand and capacity review has been completed and revised job plans for improved maximization of clinical activity against demand have been identified. New job plans are in the process of being mobilised and additional monitoring for caseload volumes has been implemented, as well as a system which highlights young people who have been receiving intervention for longer than expected to support with letting go and discharge.

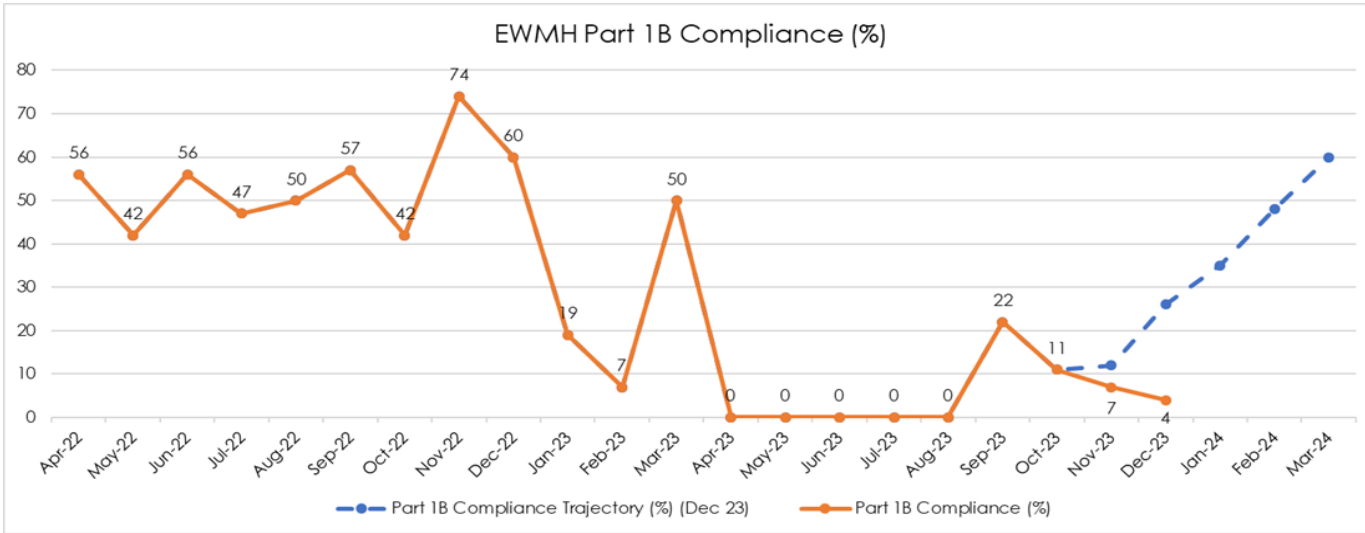
Previous data quality and reporting issues have largely been addressed through the development of the new PARIS module for the team. We continue to work closely with the PARIS team to refine the

reporting and proactively address any potential data quality issues, weekly internal monitoring remains in place to monitor capacity, demand and performance.

Graph 8



Graph 9



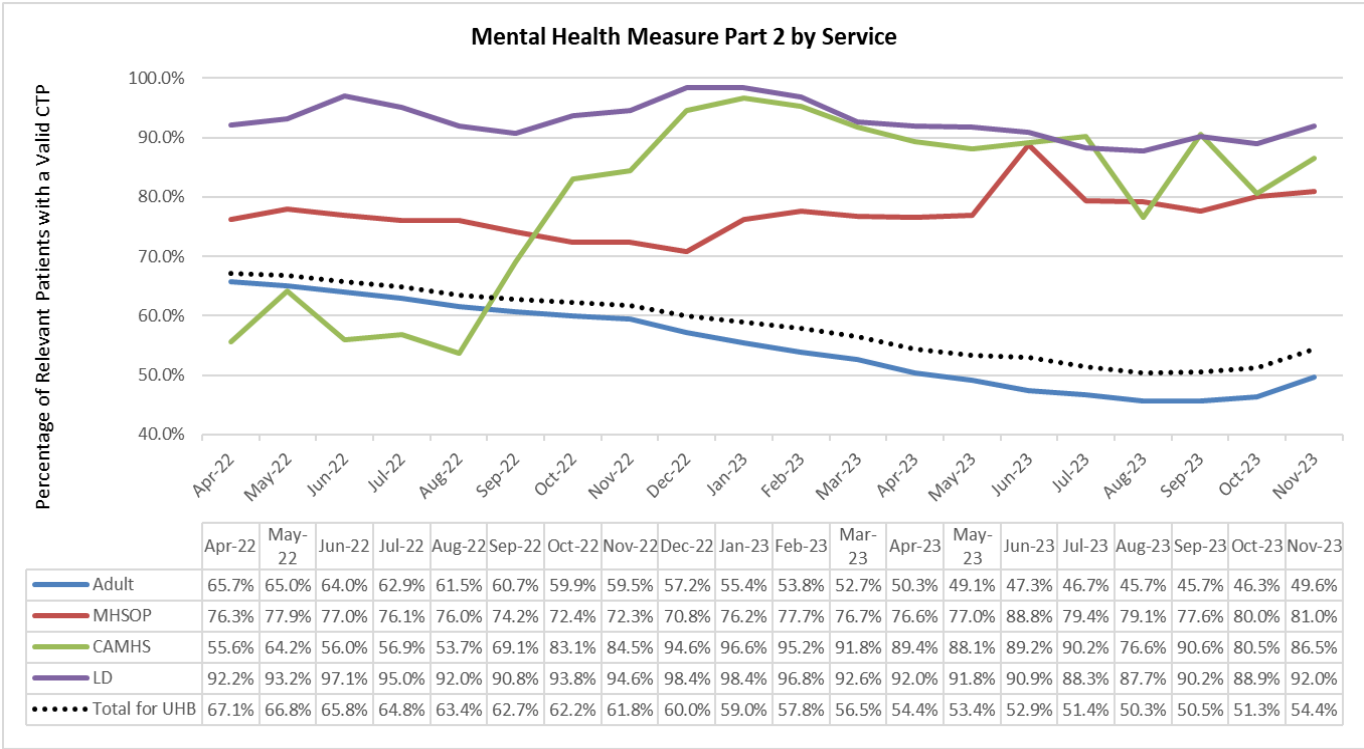
Actions to improve compliance against the target include:

- Recruitment to vacant posts – 3.00 WTE to be recruited (1 x Band 8a Psychologist and 2 x Band 4 Support Worker)
- Active sickness and absence monitoring and wellbeing support to the team – currently 3.00 WTE on LTS
- Additional capacity using agency staff
- Active weekly monitoring of capacity and demand as well as caseloads and supporting the process of letting go through peer group
- Regular triage of the internal waiting list and waiting list validation
- Work with PARIS and clinical team to address data capture, recording and reporting quality
- Active work on clinical pathways to ensure a clear model that allows for clear capacity and demand planning

- Extension of the group offer which provides an alternative intervention offer for several children and young people, which will help meet demand
- Engagement with Silvercloud re developing the refer in offer for support offer for anxiety, depression and low mood
- Evaluation of acceptance criteria for referrals at SPOA to make sure we are consistent in decision making and maximising signposting opportunities.

Part 2 – Care and Treatment Planning (over 18)

Standard for all relevant service users in secondary care to have an outcomes based holistic co-produced care plan



Graph 10

There has been a steady improvement in compliance with Care and Treatment Plan compliance since August 2023. This has seen month on month improvement with a dedicated focus in teams to improve overall multidisciplinary compliance. The most significant remaining challenge continues to be compliance within medical caseloads, specifically where the medic has:

1. Large caseloads of patients (typically over 100)
2. Where the medic is the only professional involved in the care of the individual

There is significant national variation with how this is approached in different Health Boards. Cardiff and Vale have the highest caseloads in secondary care per 100,000 people with an average of over 800 people per 100,000 on a secondary care caseload. The final draft of the Recovery And Maintenance Programme (RAMP) Protocol has been submitted to the Controlled Document Oversight Group on 23<sup>rd</sup> January 2024 following several discussions and amendments. A Equality Health Impact Assessment is approaching completion. Following ratification of the protocol, the Part 1 Scheme which articulates all of the Mental Health provision outside of Part 2 services will be amended and submitted to the committee for ratification. The RAMP Protocol is designed for service users who only see a single clinician and where they cannot be discharged due to limits of provision in primary care (such as for medications where there is no shared care agreement). The expected benefits for compliance will be that this will create the first provision in line with the Measure for

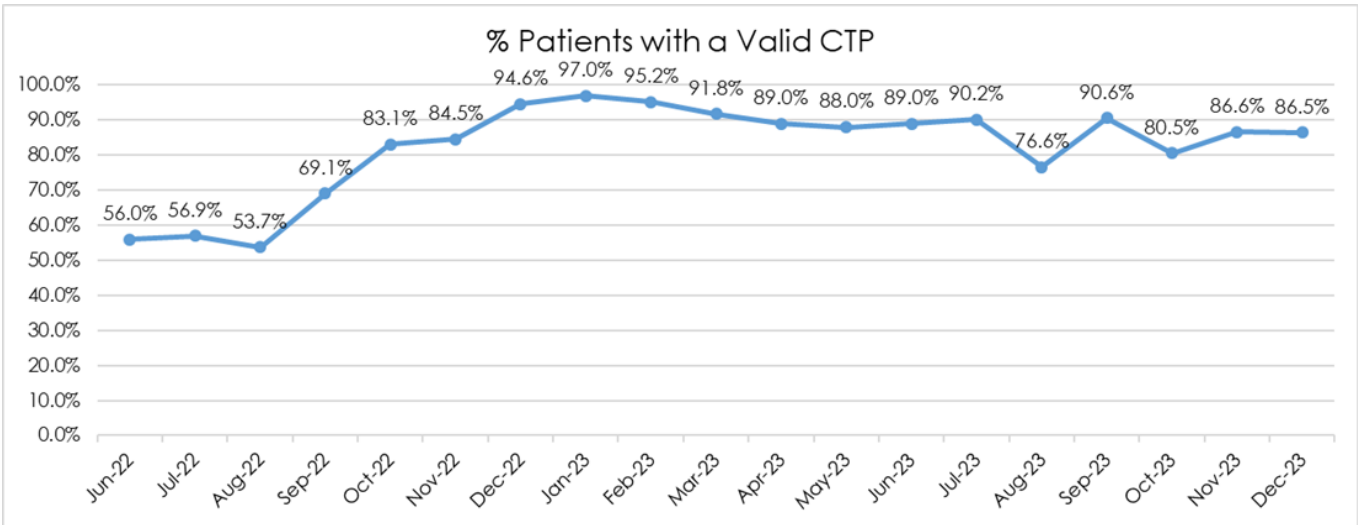
‘Stable Severe’ service users. The benefit for service users will be that their care will continue to be delivered, Part 3 rights will be protected, access to usual services such as the CMHT Duty worker will continue and all letters to the GP from the Outpatient Clinic are mandated to be sent to the service user.

Where this is applied in Adult Mental Health services, we expect to see significant improvements in Care and Treatment Plan compliance month on month, as service users are transferred onto the RAMP Protocol.

During the last quarter, a discussion was held to discuss concerns about Care and Treatment Plan quality from Mental Health Managers. A new Recovery and Wellbeing College course *Preparing for Discharge* has commenced on the Wards and Mental Health Managers were invited to both access training in the Recovery and Wellbeing College and to engage with the development of a new course for service users and staff to improve the quality of Care and Treatment Plans.

**Part 2 – Care and Treatment Planning (Children & Young People)**

**Graph 11**



For the last quarter, compliance has dipped slightly below target. The service continues to face challenges in relation to the CTP process including poor engagement from young people as a result of the paperwork having a more adult focus. This issue has been flagged to the All-Wales CAMHS Implementation Network in the hope a collective piece of work can be completed to make improvements to the paperwork for children and young people. The team are working hard to ensure that the process can be completed in a meaningful manner through a range of options including face to face, telephone and VC where appropriate and in a supportive multi-agency approach.

It is anticipated that the implementation of the new clinical pathways, with clearer identification of those children and young people requiring a CTP will have a positive longer-term impact on the achievement of the target. All staff have received in-house Part 2 training to support with the identification of young people who should be on a CTP.

There are also now clearer mechanisms on PARIS to capture Part 2 data and sustaining compliance remains a priority for the service.

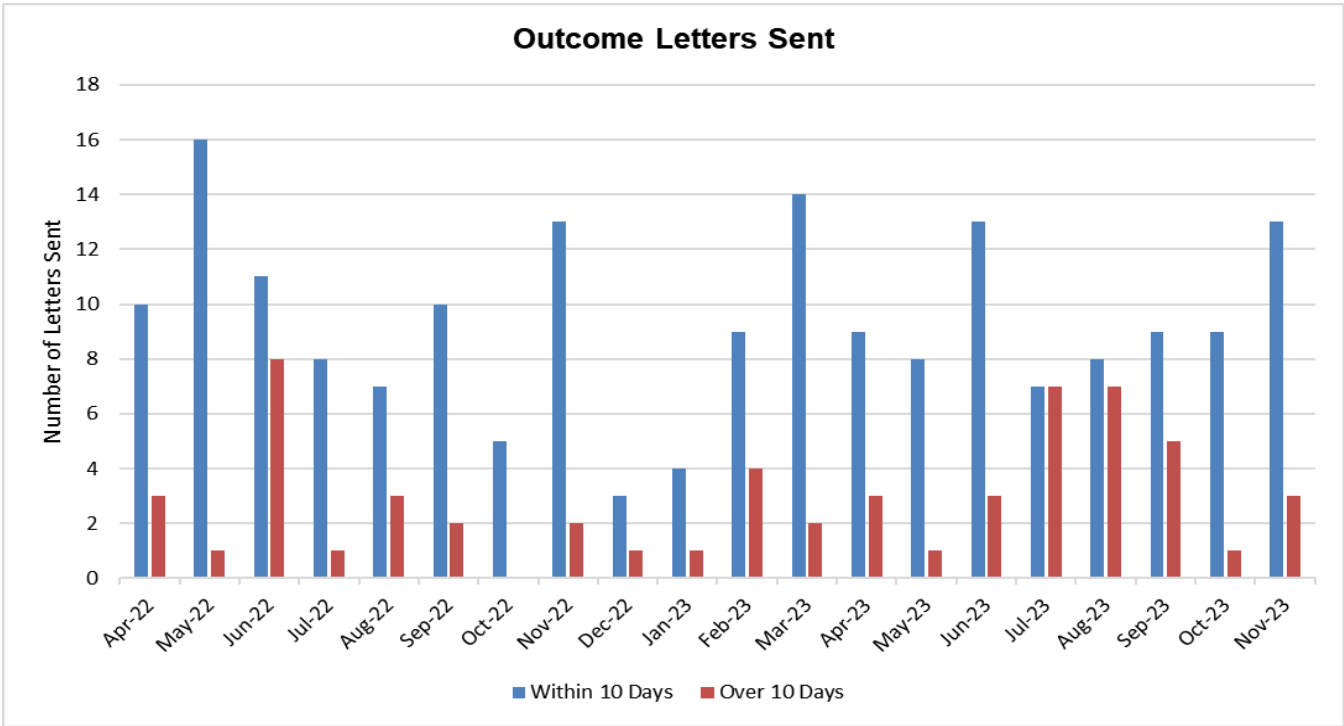
Actions to improve compliance against the target include:

- Embedding staff training

- Engagement with Youth Board re ensuring a child and young person friendly approach to the CTP process.
- Engagement with All Wales CAMHS Implementation Network to support a national improvement to the paperwork for CYP

**Part 3 - Right to request an assessment by self –referral.**

The target relates to service users who have self-referred, having a confirmation letter regarding the outcome of their assessment within 10 days. Graph 11 details our compliance of the target time of within 10 working days for an assessment outcome letter to be sent to the patient.



**Graph 12**

Three letters (19%) in November and one (10%) in October were sent outside of the 10 day target. This is an improvement on the performance in September, August and July 2023. Actions were taken with team administrators in the Adult Directorate to ensure that teams fully understood the expectations and that any processes causing delays in the team were addressed. In November 69% of self-referrals were accepted onto the caseload, the highest proportion this year. The lowest proportion of referrals accepted this year was in August where none of the 14 referrals were accepted back onto caseloads.

**Part 4 – Advocacy – standard to have access to an IMHA within 5 working days**

**Part 4:**

With regards to Part 1-4 of the Measure, Committee Members are updated as follows:

**Part 1:**

**Part 2:**



Part 3:

Part 4:

100% compliance, no further actions.

The following has been submitted from Advocacy Support Cymru:-

Advocacy has arranged to provide awareness raising session at the start of 2024 to the Mental Health Act Office in Cardiff and Panel Members who sit on Managers hearings for Cardiff and Vale UHB. The Advocacy Manager for Cardiff has also agreed to provide an awareness raising session to Dr Andrew Hider in January 2024, as he has requested a meeting to discuss the IMHA role and the service they provide to patients in Hospitals overseen by Iris care group. A number of sessions on an individual basis on the acute wards and to new staff members for the Recovery Wellbeing College.

There is a very positive perspective on advocates from ward staff on the non-instructed/older persons wards East 10, 12, 14, 16 & 18 which has been reflected by the high number of referrals received from these wards. Managers arranging discretionary reviews to make sure the care plans are moving forward

Panel members demonstrating respect and understanding of clients, and affording them the time to have their say during the hearings. Interpreters used by NHS staff to ensure clients are fully involved in meetings.

Recommendation:

The Committee is requested to:  
Committee to note the contents of the report

Link to Strategic Objectives of Shaping our Future Wellbeing:  
Please tick as relevant

Reduce health inequalities	X	Have a planned care system where demand and capacity are in balance	
Deliver outcomes that matter to people	X	Be a great place to work and learn	
All take responsibility for improving our health and wellbeing	X	Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X
Offer services that deliver the population health our citizens are entitled to expect	X	Reduce harm, waste and variation sustainably making best use of the resources available to us	
Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered  
Please tick as relevant



Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
Impact Assessment: Please state yes or no for each category. If yes please provide further details.									
Risk: Yes/No									
Safety: Yes/No									
No									
Financial: Yes/No									
No									
Workforce: Yes/No									
No									
Legal: Yes/No									
No									
Reputational: Yes/No									
Yes									
Socio Economic: Yes/No									
No									
Equality and Health: Yes/No									
Yes									
Decarbonisation: Yes/No									
n/a									
Approval/Scrutiny Route:									
Committee/Group/Executive					Date:				

Chilcott, Rachel  
23/01/2024 15:37:53

MINUTES OF THE MEETING OF THE MENTAL HEALTH ACT HOSPITAL MANAGERS  
POWER OF DISCHARGE SUB COMMITTEE HELD AT 2PM ON 9th January 2024 MENTAL  
HEALTH ACT OFFICE AND VIA TEAMS

**Present:**

Jeff Champney-Smith Chair, PoD Group  
Elizabeth Singer - Vice Chair, PoD Group  
Alex Nute - PoD member  
Carol Thomas- PoD member via TEAMS  
Peter Kelly – PoD member via TEAMS  
Mair Rawle - PoD member  
Alan Parker - PoD member  
Gerrie Hughes – PoD member via TEAMS  
Mike Lewis – PoD member  
Wendy Hewitt-Sayer - PoD member

**In attendance:**

David Seward – Mental Health Act Manager  
Nicola Jones – Assistant Mental Health Act Administrator  
Beverley Bingham – Assistant Mental Health Act Administrator

**Apologies:**

Amanda Morgan -PoD Member  
Professor Ceri Phillips - Vice Chair Cardiff and Vale Health Board  
Margaret Jones – PoD member  
Mary Williams – PoD member  
John Owen - PoD member

**1. Welcome and Introductions**

The meeting was held in the MHA office and via Teams and the Chair welcomed all to the meeting.

**2. New Members and Independent Members**

There had been no new appointments since the last meeting.

**3. Apologies**

Apologies were received and noted.

**4. Members points for open discussion**

- **Request to observe Hearings** – where a patient has capacity they should be asked for their consent for any observers. Where a patient is deemed to lack capacity and where an advocate has been instructed, the advocate should be asked if there are any objections to an observer being present. If at any point in a Hearing a patient objects to an observer being present the Chair should ask the observer to leave. Cardiff and Vale UHB is a teaching hospital, it is implied that students and others who are in training roles will be permitted to observe activities unless a patient objects. The Chair of the panel is to be consulted prior to the Hearing. **Action – PoD members**
- **Who decides on a Face to Face Hearing** – it was confirmed that when a Hearing is being set up the MHA office staff ask ward staff whether a patient wants a face to face hearing or are content with the Hearing being held over Teams. If the patient doesn't respond within two weeks the Hearing will default to being held on Teams.

Chilcott, Rachel  
23/01/2024 14:37:53

## 5. Minutes of Meeting held on 7th October 2023

The minutes were confirmed as an accurate record of the meeting.

## 6. Matters Arising

- **Feedback after hearings** – the Chair had reviewed a sample of completed forms. Given the sample size he has been unable to draw any conclusions so he will continue to monitor on an on-going basis. All reminded to come together at the end of the Hearing to discuss what went well and any areas for improvement or training. **Action - Chair and PoD members**
- **Teams facilitation** – the MHA Manager explained the difficulties for the MHA office when they are tied up facilitating the Teams Hearings. The Chair had trialled a system whereby he contacted the facilitator on a mobile at the start of the Hearing who let in all parties. When the panel adjourned to consider their decision, the other participants were asked to leave the meeting and re-join and wait in the lobby. Once the panel had come to a decision the facilitator was contacted again to allow the professionals to re-join the meeting. This had been extended following the last PoD business meeting. There had been no issues raised so it was proposed to continue the arrangement.

## 7. Operational Issues

- **Feedback from professionals** – after each hearing all the professionals are asked if they wish to provide feedback on the conduct of the Hearing. Recent feedback concerned whether the Panels were extending their remit beyond that is required of them to determine whether the criteria for detention were met. There was a discussion regarding this and it was agreed that the Chair would respond with the following in mind:
  - treatment was wider than medical treatment and medication
  - the panel had discretionary powers beyond the statutory requirements
  - care and treatment planning and the assessment of risk, using the risk assessment, are fundamental documents for the panel to consider
  - the panel is a lay body and whilst operating within the statutory framework need to engage on a human level with the patient and their nearest relative
  - the panel have been asked by both the Mental Health and Legislation and Governance Group and the Mental Health Legislation and Mental Capacity Act Committee to continue to highlight issues with care plans and risk assessments**Action - Chair**
- **Who determines capacity** – this was raised by a member concerned that a Hearing had to be adjourned because a patient who was unrepresented was deemed not to have capacity. The ward had indicated that the patient had capacity and therefore advocacy had not been contacted but the RC had stated the patient didn't have capacity. All agreed this was a complex subject. In summary the Chair reminded the meeting that this is a clinical team decision arrived at by consensus. It can vary at any time and in different domains. In the absence of information to the contrary we must assume a patient has capacity. **Action – PoD members**

## 8. Lessons Learnt

Nothing to note this quarter.

## 9. MHA Activity Monitoring Reports

Activity reports were provided for the periods July to September 2023 and October to December 2023 for both Hospital Managers and Tribunals. The contents of the reports were noted with the

following issues highlighted:

- Representation by advocacy had improved in the last quarter
- There had been a number of adjournments for both Manager's Hearings and Tribunals
- There was an error in the heading of the tribunal report for the quarter July to September that read April to June and the bar chart was also incorrect.
- There was a query from a PoD member regarding the PIE Chart for advocacy. The PoD member agreed to discuss with the Deputy MHA Manager responsible for compiling the reports.

**Action – MHA Manager/PoD member**

## **10. Concerns/compliments from Power of Discharge group Hearings**

These were noted and discussed. The Committee were content that there had been quite detailed responses to the concerns raised although the previous quarters report had not been updated for completed actions. The Mental Health Act Manager confirmed that these had in fact been provided.

## **11. Committee and Sub-Committee Feedback**

The Chair had nothing further to add. The minutes from these meetings were attached.

## **12. Training**

The All Wales Training day is to be held on the 29<sup>th</sup> February 2024 in Builth Wells. Please confirm attendance. **Action – PoD members**

Alex Nute to deliver training on Acquired Brain Injuries at the next PoD meeting. **Action - Alex Nute**

Chair advised that Dan Crossland had invited PoD members to join the CTP training – **Action – PoD members**

## **13. A.O.B**

There was a discussion regarding the suitability of Beech Ward seminar room for holding hearings. It was agreed to monitor the situation as it was just a temporary measure.

The issue of parking on a Tuesday was raised as members had experienced difficulties despite the meeting being moved to a Tuesday afternoon. It was agreed to start the April meeting at 3pm.

**Action – PoD members/MHA Manager**

A PoD member highlighted the number of late cancellations and the work involved for panel members without being compensated. Comments noted.

After discussion it was agreed that there was no longer a requirement for the Chair to attend the patient on the ward to give them the panel's decision. **Action – Chairs**

Discretionary reviews – not all HB's allow these. The Chair advised that he would be reviewing the use of discretionary Hearings. Panels should provide reasons for requiring a discretionary review.

**Action – PoD members**

The MHA Manager noted that Morgan was off on maternity leave for a year. There was to be no replacement for her during this time. The Chair, on behalf of the PoD sent her our best wishes.

Date and time of future meetings to be held on **9<sup>th</sup> April at 3pm** in the MHA Office, Hafan Y Coed.

9<sup>th</sup> July 2024

8<sup>th</sup> October 2024

14<sup>th</sup> January 2025



GIG  
CYMRU  
NHS  
WALES

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

**Minutes of the Mental Health Legislation and Governance Group held at 10:00 on 11 January 2024 via Microsoft Teams**

**Present**

Robert Kidd  
David Seward  
Claire Ward

Jeff Champney-Smith  
Callista Hettiarachichi  
Claire Thomas  
Noel Martinez Walsh  
Chris Frayne  
Demi Bernard  
Pippa Johnson  
Gemma Lewis  
Bethan Evans  
Gemma Moeller  
Jayne Jennings  
Mannon Price

(Chair) Consultant Psychologist  
Mental Health Act Manager  
Consultant Social Worker DOLS/ AMHP  
Lead, Cardiff LA  
Chair, PoD Group  
Consultant Representative, CAMHs  
South Wales Police Representative  
Lead Social Worker, Vale LA  
Senior Nurse, Low Secure Services  
Advocacy Support Cymru Representative  
Mental Capacity Practitioner  
Emergency Duty Team Lead, Cardiff LA  
Emergency Duty Team Lead, Vale LA  
South Wales Police Representative  
Senior Nurse, Inpatients  
Interim Ward Manager, Alder (PICU)

**Apologies**

Ceri Phillips  
Ceri Lovell  
Andrea Sullivan

Rhiain Lewis

Judith Hill  
Rachel Rushforth  
Philip Ball  
Arpita Chakrabarti  
Linda Woodley

Sunni Webb

Vice Chair, Cardiff and Vale UHB  
CAMHs Representative  
Senior Nurse for Quality, Safety & Education  
Senior Nurse for Quality, Safety & Education  
Project Lead, MCA/DoLs  
Lead Nurse, Adult Mental Health  
Senior Nurse, Community  
Clinical Director, MHSOP  
Operational Managers, Vale of Glamorgan LA  
Service Manager, Inpatients & Rehab

**1 Welcome and Introductions**

Chilcott, Rachel  
23/01/2024 15:37

As there were several new attendees in today's meeting, everyone went around and introduced themselves.

## **2 Apologies for absence**

Apologies were noted.

## **3 Minutes of meeting held on 12 October 2023**

No points of correction have been highlighted from the previous minutes.

## **4 MHA Activity**

The pertinent parts of the monitoring report and exception report were discussed in some detail.

There had been 7 uses of s135 last quarter which is within our limits so no concern. It was noted that s4 hadn't been used since December 2022. The number of shift coordinators amendments on HO14's were improved but AMHP and Doctor amendments were still the same.

Unfortunately, there were several fundamentally defective uses of the Act this quarter. Due to the number of defective 5(2) reports we have been receiving lately, a new graph has been created to show this.

There was one fundamentally defective section 2, where an AMHP detained a patient that was currently serving time in HMP. The Interim Ward Manager for Alder presented a fact finding on the incident within Operational Issues & Incidents.

There were three fundamentally defective uses of section 5(2) this quarter- one of which was within HYC and two were within non-mental health wards. The specifics of each use were discussed and it was agreed there is a clear training gap for junior doctors and ward staff working in UHW. The MHA Manager has been in liaison with staff from various parts of UHW and is in the process of putting a training package together. Unfortunately, due to resource it is proving very difficult to find adequate time to go to UHW to offer training/guidance. The group were informed that Morgan Bellamy, the lead trainer on the MHA for the UHB is shortly to go off on maternity leave and that the capability to provide training will be impacted by this. The MHA Manager and Deputy MHA Manager will continue to fill in the gaps where possible. It was reiterated that all information needed for 5(2)'s is on the MHAO intranet page.

There was one invalid use of the MHA, where by a patient was on a s2 and the RC had arranged a s3 assessment but the AMHP didn't agree they met the criteria and told the patient they were no longer detained under s2, which isn't correct as only the RC can discharge a patient. All agreed it was an unusual situation for noting.

The use of s136 has increased by a small amount this quarter but it took us just over the upper control limit. The instances of s136 on people under the age of 18 has decreased considerably.

Chloe, Rachel  
23/01/2024 15:37:53

This quarter there was one lapsed s136 for a CAMHs patient – the MHA Manager could recall the situation behind it unfortunately but the patient didn't have an assessment within the 24 hours.

It was noted that Sir Gary Hickinbottom, the President of Welsh Tribunals visited HYC to have a tour of the facilities and see where Tribunals are held. It was a very informative meeting where Tribunal concerns were raised and parking issues in HYC for Tribunal members was discussed.

The MHAO continue to run training and development sessions for the HB. The frequency of the training has changed due to the lead trainer going on maternity leave and the training being absorbed by others. Audits of the CMHT's and ward is still ongoing.

## **5 Matters for Action**

Understanding how to use the AMaT software need progressing but unfortunately due to Morgan going on maternity leave, the MHA Manager will take this action forward along with the Chair. ***Keep on action log.***

There is ongoing concern around the on call SPR's and consultants accepting MHA assessments after 4pm and AMHP's are then potentially having to wait until after 5 to contact the on-call doctors. The Consultant Social Worker DOLS/ AMHP Lead, Cardiff LA raised a situation where a consultant refused to attend a MHA assessment because it was after 4pm which then meant the AMHP didn't finish an assessment until 8pm that night and another AMHP early the following morning. Clinical Director, Adult had sent an e-mail to the AMHP Lead, Vale of Glamorgan detailing when an SPR and consultant should accept assessments. It was questioned if all SPR's and consultant had had sight of this.

### ***Action - Chair to discuss with the Clinical Board Director***

A 136 assessment was completed with only one doctor which is lawful but not usual best practice although the EDT Lead, Cardiff LA feels there is a shift towards this as it is sometimes the least restrictive practice and there is a resource and cost implication on getting a s12 doctor. One assessment she recalls there was some resistant from SPR's wanting a second doctor present, it then turns the assessment from a 136 one to a full MHA assessment. Some clarity is requested to ensure a consistent approach going forward. Given also that the figures for 136's that ended in detention is low, that would suggest that a full MHA assessment isn't proportionate for those individuals.

### ***Action – MHA Manager to liaise with Clinical Board Director***

No update regarding the section 135 incident in EAS, however the Lead Nurse, Adult Mental Health agreed to look into the incident and report back any findings at the next meeting.

### ***Action – Lead Nurse, Adult Mental Health to investigate***

There is still an ongoing concern from Advocacy around the lack of structure of ward reviews and advocates being aware of them in order to support patients properly.

Child & Race  
23/01/2024 15:53

***Action – MHA Manager to take forward in connect to project work on MDTs***

No update on viewing repeat 136's on PARIS but it is still a concern and needs a solution for all. Digital Lead needs to investigate and report back. ***Keep on action log.***

Section 140/ out of area policy has been incorporated into the bed management policy by the Service Manager for Inpatients and is soon to be completed and circulated for the comments – the LA leads have already had access to this policy and commented.

***Action – Service Manager, Inpatients & Rehab in discussion with LA.***

There is still a s117 knowledge gap within Children's Service and with the new 117 Supreme Court ruling it is felt more poignant now however, the Consultant Social Worker DOLS/ AMHP Lead for Cardiff LA and the MHA Manager have tried Several times to engage with Children's Services on this issue but through staff Changes, the meetings kept getting cancelled. The new Consultant Social Worker DOLS/AMHP Lead for Cardiff LA will reach back out to Children's Service. ***Keep on action log.***

The commissioning of conveyancing for LD patients' needs to be looked into further around whether it is conveying in or out of our area where the issue lies. ***Keep on action log.***

The Supreme Court Ruling was discussed, where it was noted that both LA and CaV HB were going to send a joint letter to Welsh Government to request them to look at the ruling as the impact it has on LA and the HB could be expediential. There is on-going work the Clinical Board are doing in the background around 117 in general, ensuring our 117 register is as accurate as possible by creating a standard operating procedure in conjunction with the LA.

**6 Feedback on operational issues and incidents**

No follow up meeting re locked doors.

The Interim Ward Manager, Alder presented her fact finding following an admission to PICU of a patient who was serving a sentence in HMP Cardiff. The patient had been sent to UHW for a physical issue, his MH deteriorated and following a MHA assessment, was detained under s2 and transferred to HYC. Sentence prisoners can't be detained under a s2 as there is a formal judicial process that must be followed to issue a warrant under s47/49. Patient was administered IM but unsure what legislation was used as no access to UHW notes. Patient was transferred back to HMP while awaiting a s47 warrant to be issued. A wider refresh of Part 3 patients would be useful for all. It was queried whether the prison service has completed a review on this as they broke their own protocols/procedures. It was agreed this should be taken forward.

***Action – Chair to liaise with Clinical Board to reach out to Prison Service to check their review process.***

Chicott, Rachel  
23/01/2024 15:37:53



## **7 Feedback**

The Police Representative raised an issue regarding a patient and a s135 warrant, where a PoS couldn't be identified for an assessment. The Police Representative and the Senior Nurse, Inpatients confirmed there was going to be further investigations into the issue and the decisions made and they would feedback to the group.

### ***Action – Police Representative and Senior Nurse, Inpatients to investigate and bring back***

The Advocacy Representative raised a concern in relation to a ward manager stating that Advocacy aren't allowed to walk around the ward anymore and they should stay in a room, where nurses will bring patients to them. It was explained that this is a breach in their contractual obligation to provide awareness sessions to patients and they aren't able to if they can't walk around the wards as this is how they get most of their referrals, by patients asking who they are etc and advocates have been able to raise safeguarding concerns by walking around the wards. Still a large number of referrals from MHAO and MHSOP Wards, which is greatly appreciated.

### ***Action – Advocacy Representative to liaise with Senior Nurse, Inpatients for clarity***

No feedback from consultants.

No feedback from the LA.

No feedback from Approved Clinicians panel.

No additional feedback from Tribunal.

## **8 Power of Discharge Group comments, compliments and feedback**

The PoD group recently discussed barring hearings and the assessment of dangerousness and risk when hearing these applications. However, it was noted that these aren't held often and therefore aren't considered of imminent concern. Care and treatment plans still constitute a high amount of the concerns raised by the PoD group following hearings. The issue of capacity and representation was briefly discussed as being on PoD's radar which might develop further.

## **9 External reviews**

None held this quarter.

## **10 Interface MHA/MCA/DOLS**

No feedback.

## **11 Quality indicators and audit activities**

This should remain on the agenda but there hasn't been any update on this.

Chilcott, Rachel  
23/01/2024 15:37:53

## 12 Any other business

The Supreme Court Judgement regarding section 117 of the Act was discussed at length previously in the meeting. Any updates from the Health Board or LA will be added to the agenda when necessary.

Work is still ongoing in relation to the race and inequalities paper and it hoped that in the not too distant future the health board will release a health inequalities framework. This should help us think about health inequalities and how we identify and help to reduce these.

The Draft Mental Health Bill has been removed from the attachments as there is no further information on this and it is not likely that it will be taken forward within this Parliament.

EDT Team Lead, Cardiff LA brought up the issue of detaining people in A&E and where patients can/can't be detained and that it is still an ongoing issue. The MHA Manager is in a working group with A&E to try and develop a MH pathway and the Senior Nurse, Crisis was taking the lead on this. The issues noted was that A&E have a different definition of a 'hospital bed' and what it means to be 'admitted'. They have also had building work within A&E so the various spaces and departments have changed which might have an impact on where people can be detained.

***Action – MHA Manager to liaise with Senior Nurse, Crisis on MH pathway***

## 13 Date of future meetings

11<sup>th</sup> April 2024

11<sup>th</sup> July 2024

10<sup>th</sup> October 2024

16<sup>th</sup> January 2025

Chilcott, Rachel  
23/01/2024 15:37:53

## Mental Health Legislation & Governance Group Action Log

Key:	<b>Red: Outstanding</b>	<b>Amber: In progress</b>	<b>Green: Completed</b>
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### ACTIONS FROM PREVIOUS MEETINGS

STATUS	SUBJECT	AGREED ACTION	ACTION BY
<b>Revised below</b>	SPR's taking assessments after 4pm	Investigate the agreed position surrounding assessments	<b>RK</b>
	Viewing the repeat 136 admissions in PARIS	PARIS needs alert on main screen that all directorates can see including CAMHs	<b>SM/RK</b>
<b>Revised below</b>	136 assessments with one doctor	Discussion to be had at next MAC meeting and at the 136 policy group	<b>AT/DS</b>
	Conveyancing for LD patients	Chair to investigate LD commissioning with Swansea Bay UHB	<b>RK</b>
	Understanding the AMaT software	MHA Manager and Chair to understand the AMaT software	<b>RK/DS</b>
	Section 135 incident – no cover in EAS. SecureCare had to manage patient	Fact finding in order to establish the issues surrounding this incident – Lead Nurse to take forward	<b>RR</b>
<b>Revised below</b>	Lack of structure with ward reviews for Advocates	MHA Manager to liaise with Advocacy to find a suitable solution	<b>DS/DB</b>
	Bed management/s140 policy	Once finished, to be circulated for comment by Service Manager for Inpatients.	<b>SW</b>
<b>Revised below</b>	117 knowledge gaps in CAMHs LA teams	Re-start discussions for training to be scheduled in	<b>KL/DS/CH</b>
	Supreme Court Ruling	Further discussions to be had regarding the impact of the ruling	<b>RK/DS</b>

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## ACTIONS FROM THIS MEETING – 11<sup>th</sup> January 2024

STATUS	SUBJECT	AGREED ACTION	ACTION BY
	SPR's and consultants taking assessments after 4pm	Chair to discuss further with the Clinical Board Director and AMHP colleagues from the LA for an agreed position	<b>RK</b>
	136 assessment with one doctor	MHA Manager to discuss with Clinical Board Director whether one doctor is sufficient in CaV for a consistent approach	<b>DS</b>
	Lack of structure with ward reviews for Advocates	MHA Manager to liaise with Deepali Mahajan re: new ward round structure	<b>DS</b>
	117 knowledge gaps in CAMHs LA teams	Re-start discussions with CAMHs LA for training to be scheduled in	<b>CW/DS/CH</b>
	Sentenced prisoner being detained in HYC	Chair to liaise with Clinical Board about reaching out to Prison service re: review of incident	<b>RK</b>
	Section 135 incident where no PoS identified	Police Representative and Senior Nurse, Inpatients to investigate further and feed back	<b>JJ/CLT</b>
	Advocacy not allowed to walk around wards	Advocacy Representative to liaise with Senior Nurse, Inpatients for clarity	<b>JJ/DB</b>
	Patients being detained in A&E	MHA Manager to liaise with Senior Nurse, Crisis and Clinical Board about detaining patients in A&E	<b>DS</b>

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Report Title:	<b>Policies</b>  1. <i>Receipt of Applications for Detention under the Mental Health Act Procedure</i> 2. <i>Mental Health Review Tribunal Procedure and Guidance</i>			Agenda Item no.	12.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	X	Meeting Date:	30 January 2024
Status (please tick one only):	Assurance	Private	Approval	X	Information
Lead Executive:	Mental Health Clinical Board Director of Operations				
Report Author (Title):	Senior Corporate Governance Officer				
Main Report					
Background and current situation:					
<b>Receipt of Applications for Detention under the Mental Health Act Procedure:</b>  This policy is required to ensure correct receipt and scrutiny of MHA detention papers by those formally delegated to undertake the task on behalf of the Hospital Managers (please see scheme of delegation policy). Officers responsible for receipt and scrutiny of detention papers must be suitably trained and fully aware of this procedure.  This policy is applicable to all employees delegated to receive and scrutinise statutory forms required by the MHA 1983 on behalf of the Hospital Managers for Cardiff and Vale UHB.					
<b>Mental Health Review Tribunal for Wales Guidance:</b>  This policy has been developed in line with the Mental Health Act (MHA)1983 (2007), the Human Rights Act 1998, the Mental Health Review Tribunal for Wales rules 2008, the MHA Regulations 2008 and the MHA Code of Practice for Wales.  This document is required to ensure correct procedures are followed in relation to all aspects of MHRT proceedings in accordance with the MHA 1983 and the MHRT for Wales rules 2008.  This policy is applicable to all employees involved in MHRT proceedings as well as students who may observe Tribunal hearings. This could also be shared with universities where the UHB supports clinical placement.					
Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:					
The Receipt of Applications for Detention under the Mental Health Act Procedure has been reviewed and amended accordingly: <ul style="list-style-type: none"><li>• Mental Health Legislation &amp; Mental Capacity Act Committee replaces Mental Health &amp; Capacity Legislation Committee.</li><li>• Added new section detailing what statutory forms are required for each Section.</li><li>• Expanded on paragraphs throughout for easier reading and understanding.</li></ul>					
The Mental Health Review Tribunal for Wales Guidance has been reviewed and amended accordingly:					

- Added the new application appeal form as it includes tick box for patient to choose the format of the hearing
- Added the form 'request to withdraw an application to the Mental Health Review Tribunal for Wales'
- Added a nursing report template
- Expanded on paragraphs throughout for clearer clarity and understanding.
- 

Wide consultation has taken place to ensure that the policies, procedures and protocol meets the needs of our stakeholders and the Health Board.

Where appropriate comments were taken on board and incorporated within the document.

The primary source for dissemination of these documents within the UHB will be via the Mental Health Act Office intranet site and clinical portal. It will also be made available to the wider community and our partners via the UHB internet site.

### Recommendation:

The Committee is requested to:

a) **APPROVE:**

- Receipt of Applications for Detention under the Mental Health Act Procedure
- Mental Health Review Tribunal Procedure and Guidance

b) **APPROVE** the full publication of the Policies and Procedures referred to under recommendation a) above, in accordance with the UHB Publication Scheme.

### Link to Strategic Objectives of Shaping our Future Wellbeing:

*Please tick as relevant*

1. Reduce health inequalities	X	6. Have a planned care system where demand and capacity are in balance	X
2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn	X
3. All take responsibility for improving our health and wellbeing	X	8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X
4. Offer services that deliver the population health our citizens are entitled to expect	X	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	X
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	X

### Five Ways of Working (Sustainable Development Principles) considered

*Please tick as relevant*

Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
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### Impact Assessment:

*Please state yes or no for each category. If yes please provide further details.*

Risk:
No
Safety:
No
Financial:

No	
Workforce:	
No	
Legal:	
<i>Outlined in documents.</i>	
Reputational:	
No	
Socio Economic:	
No	
Equality and Health:	
No	
Decarbonisation:	
No	
Approval/Scrutiny Route:	
Committee/Group/Exec	Date:

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Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

**Reference Number:** 340

**Version Number:** 3

**Date of Next Review:** 21/11/2026

**Previous Trust/LHB Reference Number** N/A

## RECEIPT OF APPLICATIONS FOR DETENTION UNDER THE MENTAL HEALTH ACT 1983

### Introduction and Aim

This policy has been developed in line with the Mental Health Act (MHA) 1983, the Human Rights Act 1998, the MHA Regulations 2008 and the MHA Code of Practice for Wales.

### Objectives

This policy is required to ensure correct receipt and scrutiny of MHA detention papers by those formally delegated to undertake the task on behalf of the Hospital Managers. Officers responsible for receipt and scrutiny of Mental Health Act detention papers must be suitably trained and fully aware of this policy.

### Scope

This policy is applicable to all employees delegated to receive and scrutinise statutory forms required by the MHA 1983 on behalf of the Hospital Managers for Cardiff and Vale UHB.

### Equality Impact Assessment

*An Equality Impact Assessment has been completed.*

### Health Impact Assessment

*A Health Impact Assessment (HIA) has not been completed*

### Documents to read alongside this Procedure

Mental Health Act 1983  
Mental Health Act 1983, Code of Practice for Wales Revised 2016  
Mental Health Regulations for Wales

### Approved by

Mental Health Act Policy Group  
Mental Health Clinical Board Quality & Safety Committee

### Accountable Executive or Clinical Board Director

*Mental Health Clinical Board*

### Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.

Caring for people  
keeping people well  
25/01/2024 16:37:56



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Summary of reviews/amendments			
Version Number	Date Review Approved	Date Published	Summary of Amendments
1	10/12/2015		
2	21/02/2020		<i>Mental Health and Capacity Legislation Committee replaces Mental Health Act Monitoring Committee throughout.</i>  <i>Reference to the new Mental Health Act Code of Practice for Wales, Revised 2016 and some language amended to reflect this.</i>  <i>Clinical Board replaces Division.</i>  <i>Scope replaces Aim to bring in line with current standard templates.</i>
3	21/11/2023	23/11/2023	<i>Mental Health Legislation &amp; Mental Capacity Act Committee replaces Mental Health &amp; Capacity Legislation Committee.</i>  <i>Added new section detailing what statutory forms are required for each Section.</i>  <i>Expanded on paragraphs throughout for easier reading and understanding.</i>

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## 1. Introduction

- 1.1. This procedure has been developed in line with the Mental Health Act 1983 (the Act), the Human Rights Act 1998 (HRA), the Mental Health (Wales) Regulations 2008 (the Regulations), the MHA Code of Practice for Wales revised 2016 (the Code) and other associated legislation. This policy is required to ensure correct receipt and scrutiny of MHA detention papers by those formally delegated to undertake the task on behalf of the Hospital Managers (please see scheme of delegation policy). Officers responsible for receipt and scrutiny of detention papers must be suitably trained and fully aware of this procedure.

## 2. Procedure Statement

- 2.1. Part II of the Act requires that certain legal and procedural formalities be observed when an application is made for a person to be admitted to hospital compulsorily. The Code identifies standards of practice that should be met when carrying out responsibilities under the Act. The Code is not legally enforceable but it is a statutory document and failure to follow it could be referred to in legal proceedings.

## 3. Scope

- 3.1. The aim of this procedure is to improve knowledge and competence of delegated staff required to receive and scrutinise statutory forms.

- 3.2. This document sets out to:

- Ensure staff are aware of their responsibilities and requirements as per the Code;
- Ensure staff protect patient's rights;
- Ensure staff protect themselves and the UHB from legal liability.

- 3.3. In order to achieve this, the following must be established:

- Effective communication processes must be provided to ensure compliance and adherence to this procedure;
- Ensure arrangements are in place for enforcing and monitoring the use of the procedure;
- Provide adequate training and support to staff delegated to undertake the task.

- 3.4. Hospital Managers have specific powers and duties under the Act. These include the authority to detain patients. Therefore, they must ensure the grounds for admission are met and that all relevant admission documents are in order.

- 3.5. This task is delegated to certain members of staff named in the Scheme of Delegation Procedure. Those delegated to act on behalf of the Hospital

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Managers must ensure competence and understanding of the requirements in order to receive and scrutinise statutory forms.

### 3.6. Hospital Managers must ensure:

- Patients are detained only as the Act allows;
- Patients treatment and care fully complies with the Act;
- Patients are fully informed of and supported in exercising their statutory rights.

### 3.7. The Act includes patient safeguards which must be met for the protection of the patient and for the protection of the UHB and delegated staff who are responsible for ensuring compliance with the Act.

## 4. Hospital Managers

### 4.1. Cardiff and Vale UHB are ultimately responsible for Hospital Managers. The Mental Health Legislation and Mental Capacity Act Committee is responsible for monitoring and reviewing the way functions under the Act are exercised on behalf of the Hospital Managers.

### 4.2. Hospital Managers must ensure that their patients are detained lawfully. They should therefore ensure that receipt and scrutiny of prescribed forms is monitored regularly.

### 4.3. Hospital Managers remain responsible for their duties even when carried out by those delegated on their behalf.

### 4.4. Hospital Managers should ensure that those delegated to receive and scrutinise statutory forms on their behalf are competent to perform these duties, understand the requirements of the Act, and receive suitable training.

## 5. Document Irregularities

### 5.1. Document irregularities fall into three broad groups:

- Those which are both incapable of retrospective correction and sufficiently serious to render the detention invalid;
- Errors and omissions that even if not corrected within the 14 day statutory period as defined under Section 15 is not sufficiently serious to render the application invalid.

### 5.2. When a patient is being admitted on the application of an Approved Mental Health Professional (AMHP), the person receiving the admission forms should check their accuracy with the AMHP.

## 6. Receipt and scrutiny of prescribed forms

### 6.1. There is a difference between 'receiving' forms and 'scrutinising' them.

- **Receipt** involves physically receiving the forms and recording that receipt.

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- **Scrutiny** is the study of those forms to ensure that the requirements of the Act and the regulations have been met. Scrutiny involves both administrative and medical scrutiny.

- 6.2. Rectification or correction is mainly concerned with inaccurate recording, making a form 'incorrect' for example, if names, dates or places are misstated, but if corrected, would not make the decision to admit a patient an unjustified one, and it cannot be used to enable a fundamentally defective application to be retrospectively validated. It also cannot be used to cure a defect which arises because an element of the procedural process leading to the detention has simply not taken place at all, i.e. the nearest relative not being consulted for a Section 3. A form may be 'defective' if the signatory has failed to complete all the sections, or delete alternative options but this can be rectified under Section 15. An unsigned form should not be accepted as rectifiable.
- 6.3. When an AMHP makes an application for detention, he or she should carefully check that the medical recommendations prepared by the doctors meet the requirements of both the Act and the Regulations. The AMHP should pay particular attention to the correct completion of the medical recommendations and application form. Wherever possible, errors on forms should be corrected before being accepted, with appropriate consultation between the AMHP and the doctors.
- 6.4. Where the person delegated to receive the forms is not a person authorised by the Hospital Managers to agree the correction of errors on an admission form, the forms should be scrutinised by an appropriately authorised person immediately on the patient's admission or during the next working day if the patient is admitted out of hours.

## 7. Receipt of statutory forms

- 7.1. The UHB has delegated the receipt of detention documents on behalf of the Hospital Managers to:
  - Mental Health Act Manager
  - Deputy Mental Health Act Manager
  - Mental Health Act Team Administration Lead
  - Mental Health Act Administrators
  - Shift Co-ordinator for the appropriate area i.e. Hafan Y Coed, MHSOP or Rehab (classified as the 'receiving officer')

- 7.2. To perform this function the staff detailed in above must have received training and instruction in the receipt and scrutiny of admission documents. All shift co-ordinators must attend yearly refresher training on the receipt and scrutiny of admission documents.

- 7.3. The statutory forms needed for each section are listed below:

### Section 2

- HO1 application by nearest relative **or**

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- HO2 application by approved mental health professional (AMHP)  
**and**
- HO4 single medical recommendation (x2)

### Section 3

- HO5 application by nearest relative **or**
- HO6 application by approved mental health professional (AMHP)  
**and**
- HO8 single medical recommendation (x2)

**NOTE:** Cardiff & Vale UHB no longer accept joint medical recommendations. This is due to them not being able to be rectified under Section 15 of the Act.

### Section 4

- HO9 application by nearest relative **or**
- HO10 application by approved mental health professional (AMHP)  
**and**
- HO11 single medical recommendation for emergency admission (x1)  
**once in hospital the below is needed also**
- HO4 single medical recommendation to convert detention to Section 2 (x1)

- 7.4. Officers responsible for receiving detention papers as listed above should accept them as soon as possible on a statutory form HO14 (sections 2, 3 and 4 – record of detention in hospital). An administrative scrutiny checklist (see Appendix 1 below) for receiving detention papers should be used each time and attached to the detention papers.

**NOTE:** Statutory HO14 is not required for receipt of section 5(4) or 5(2). Part 2 of the statutory form HO12 is completed by the designated officer for the purpose of receipt and acceptance of section 5(2).

- 7.5. During office hours (09:00 – 17:00, Monday to Friday) detention papers must be submitted to the Mental Health Act office in Hafan Y Coed, UHL to enable the team to undertake receipt and scrutiny. Other sites must make contact with the Mental Health Act office to inform them that they have detention papers to be received and make arrangements to fax or email a scanned copy the papers as a priority.

Contact details for Mental Health Act office:

- Tel: 02921 824744
- Fax: 02921 824740
- E-mail: [Mentalhealthact.Team.Cav@wales.nhs.uk](mailto:Mentalhealthact.Team.Cav@wales.nhs.uk)

- 7.6. Outside of office hours between 17:00 and 20:30 the Shift Coordinator for the appropriate area i.e. Hafan Y Coed, MHSOP or Rehab must be contacted via bleep or through the main switchboard in order to make arrangements to receive and scrutinise detention papers in line with appendix 1.

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- 7.7. The Night Site Manager is the delegated officer between 20:30 and 08:30 for the purpose of receipt of detention papers and can be contacted by bleep or the main switchboard.
- 7.8. The ward must keep a copy of the section papers in the patients file until the final version which has been processed by the Mental Health Act office is available. The section papers will be uploaded to PARIS via the MHA module and additional details tab once processed and a 'final' version will also be uploaded once they have been medically scrutinised.
- 7.9. Once the detention papers have been formally received on behalf of the Hospital Managers outside of office hours it is the responsibility of the receiving officer to ensure the detention papers are forwarded to the Mental Health Act office, Hafan Y Coed, UHL immediately.
- 7.10. Detention papers received off site must be faxed or scanned and emailed to the Mental Health Act office immediately. Once confirmation has been received the original detention papers must be sent to the Mental Health Act office in the internal mail system.
- 7.11. Detention papers received on the Hafan Y Coed site must be placed in an envelope and delivered to the Mental Health Act office letterbox for staff to receive and scrutinise on the next working day.

## 8. Administrative Scrutiny

- 8.1. It is the responsibility of the Mental Health Act office to undertake an 'administrative scrutiny' of all admission documents upon receipt and to ensure that all documentation complies with the requirements of the Act.
- 8.2. It is also the duty of this office to forward the medical recommendations to an appropriate consultant for medical scrutiny. A scrutiny rota (approved by the Clinical Director for each directorate) is used to guarantee that a consultant does not scrutinise their own medical recommendation or those of doctors within their team.

## 9. Rectification of applications and recommendations

- 9.1. Section 15 of the Act allows an application or single medical recommendation which is found to be in any regard incorrect or defective to be amended by the person who signed it, with the consent of the Hospital Managers, within 14 days of the date of admission.
- 9.2. **Incorrect** – Had the facts been correctly stated the admission would have been justified i.e. misstating dates, names or places.
- 9.3. **Defective** – Incomplete information i.e. leaving a space blank (other than a signature) or failing to delete one or more alternatives where only one can be correct.
- 9.4. Where one of the two medical recommendations is found to be insufficient section 15 (2) and (3) provide the provisions for the Hospital Managers to give

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notice to the applicant for arrangements to be made for a fresh medical recommendation to be obtained within the 14 day period.

9.5. Providing the new medical recommendation considered together with the remaining recommendation is sufficient to warrant detention. The application shall be deemed to have always been valid.

9.6. **Insufficient:**

- The medical recommendation does not describe adequate grounds to justify the admission, or
- neither doctor is approved under section 12, or
- it has been signed after the date on which the application was made, or
- more than five clear days between the days on which the doctors have examined the patient

9.7. Detention papers must not be accepted on behalf of the Hospital Managers if any of the following apply:

- The application is not accompanied by the correct number of medical recommendations (for section 2 either 1x HO3 or 2x HO4 and for section 3 1x HO7 or 2x HO8).
- The application and recommendations do not all relate to the same patient.
- The application or recommendation is not signed at all, or is signed by someone not qualified to do so.
- The application does not specify the correct hospital where the patient is being detained to.
- If the time limits of each section are not complied with (the requirement that no more than five days must elapse between the two medical recommendations no longer applies, if a fresh recommendation is required due to one of the original recommendations being insufficient.
- Any of the above faults cannot be rectified and authority for a patient's detention can only be obtained under Section 15(3) or a new application.
- If rectification is not possible then either the Hospital Managers or the patient's Responsible Clinician should exercise their powers under section 23 to discharge the patient from section.
- If a patient is already in hospital he/she can only be detained if the doctor in charge of his/her treatment (or their nominee) issues a report under Section 5(2) of the Act.
- Any new application must meet the appropriate requirements for each detention order.

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## 10. Time Limits applicable to Practitioners applying the MHA 1983

10.1. Compliance of time limits mentioned in sections 6, 11, and 12 of the Act should be checked as soon as the documents are received. Except for emergency applications under section 4, these limits are:

- The date on which the applicant last saw the patient must be within the period of 14 days ending with the date of the application.
- The dates of the medical examinations of the patients by the two doctors who gave the recommendations (not the dates the recommendations were signed) must be not more than 5 clear days apart.
- The dates of signatures of both medical recommendations must be on or before the date of the application.
- The patient's admission to hospital (or if the patient is already in hospital the reception of the documents by a person authorised by the Hospital Managers to receive them) must take place within 14 days beginning with the date of the later of the two medical examinations.

10.2. When an emergency application is made under section 4 it is accompanied in the first place by only one medical recommendation. The time limits, which apply to emergency applications only, are:

- The time at which the applicant last saw the patient must be within the period of 24 hours ending with the time of the application.
- The patient's admission to hospital must take place within the period of 24 hours starting with the time of the medical examination. An emergency application is founded on a medical recommendation therefore the date and time of application must be later than the date and time of the medical recommendation.
- The second medical recommendation must be received on behalf of the managers no more than 72 hours after the time of the patient's admission. The two medical recommendations must then comply with all the normal requirements except the requirement as to the time of the signature of the second recommendation.
- Once the second recommendation has been accepted, the section 4 is converted to a section 2 and the 28 day detention period is calculated from the date of admission to hospital.

## 11. Responsibilities

11.1. This procedure affects all members of staff responsible for undertaking receipt and scrutiny on behalf of the Hospital Managers and all patients who are being detained under the Act.

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- 11.2. Ultimate accountability for the effective management of UHB's business particularly ensuring that policies are adhered to is the responsibility of the Chief Executive as the Accountable Officer.
- 11.3. The UHB Board is responsible for effective implementation of this policy.
- 11.4. Monitoring and management of the policy will be the responsibility of the Mental Health Legislation and Mental Capacity Act Committee of the Board.
- 11.5. Clinical Boards have responsibility for compliance with the receipt of applications for detention under the Mental Health Act 1983 Policy and Procedure and should ensure that everyone in their Clinical Board understands their responsibilities in ensuring compliance.
- 11.6. Managers are responsible for managing their staff in compliance with this procedure.
- 11.7. It is the responsibility of the qualified nurse to ensure detention papers are received in accordance with this procedure when detention papers are left with them by the AMHP.

## **12. Resources**

- 12.1. The Mental Health Act Manager or delegated officer will be responsible for providing training to delegated staff receiving statutory documentation on behalf of the Hospital Managers.
- 12.2. Time must be made available for delegated staff to attend training on the receipt of statutory documentation.

## **13. Training**

- 13.1 Training should be provided by the Mental Health Act Manager or delegated officer to all members of staff receiving statutory forms.
- 13.2 Managers of staff receiving statutory forms are responsible for ensuring that this training is undertaken. Staff should not be able to receive statutory forms on behalf of the Hospital Managers unless training has been provided and their role falls within that remit as outlined in the Scheme of Delegation Procedure.
- 13.3 Staff new to an authorised role should be given training upon induction. Existing members of staff currently undertaking this task must attend yearly refresher training.
- 13.4. Training will address the criteria which must be met prior to receiving statutory forms.
- 13.5. The Mental Health Act Manager or delegated officer will keep a record of those members of staff who have been trained.
- 13.6. Once staff have attended training, updates will be provided at the request of managers or staff members.

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Approved By: <i>Mental Health Quality &amp; Safety Committee (via Chairs Action)</i>		

- 13.7. If quality issues are highlighted through audit by the Mental Health Act office the Mental Health Act Manager or delegated officer will contact the staff member or their manager to arrange individual training until improvement has been made.

## **14. Implementation**

- 14.1. This procedure is to be used by members of staff and managers of members of staff receiving statutory forms on behalf of the Hospital Managers
- 14.2. Clinical Boards need to ensure that members of staff within their area understand this procedure and disseminate to all staff members and managers of staff members working under this policy.
- 14.3. Staff members and managers of staff members working under this procedure need to ensure that they understand the contents of the document.

## **15. Equality**

- 15.1. We have undertaken an Equality Impact Assessment and received feedback on this policy and the way it operates. We wanted to know of any possible or actual impact that this policy may have on any groups in respect of their sex, maternity and pregnancy, marriage or civil partnership issues, race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or other protected characteristics. The assessment found that there was a positive impact on the Human Rights group mentioned.
- 15.2. Cardiff and Vale UHB is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff, patients and others reflects their individual needs and that we will not does not discriminate, harass or victimise individuals or groups unfairly on the basis of sex, pregnancy and maternity, gender reassignment, disability, race, age, sexual orientation, disfigurement, religion and belief, family circumstances including marriage and civil partnership. These principles run throughout our work and are reflected in our core values, our staff employment policies, our service delivery standards and our Strategic Equality Plan. We believe that all staff should have fair and equal access to training as highlighted in both the Equality Act 2010 and the 1999 Human Rights Act. The responsibility for implementing the scheme falls to all employees and UHB Board members, volunteers, agents or contractors delivering services or undertaking work on behalf of the UHB.

## **16. Audit**

- 16.1. The Mental Health Act Manager or delegated officer will monitor the progress of the implementation of the procedure.
- 16.2. The UHB Board and Mental Health Legislation and Mental Capacity Act Committee will conduct and formally review the effectiveness of the receipt of applications for detention under the Mental Health Act 1983 procedure.

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16.3. The following indicators will be used to monitor the effectiveness of the procedure:

- Delegated staff, awareness of the policy;
- Compliance with the policy;
- Monitoring of statutory forms received by delegated members of staff.

16.4. Audit findings will be reported quarterly to the Mental Health Legislation and Mental Capacity Act Committee.

## 17. References/Further Information

- Mental Health Act 1983, ISBN 0-10-542083-2
- Mental Health Act 2007, ISBN 978-0-10-541207-6
- Mental Health Act Manual, Richard Jones, Twenty-First Edition, ISBN 978-0-414-06789-9
- Mental Health Act 1983, Code of Practice for Wales, Revised 2016
- The Mental Health Regulations 2008
- The Human Rights Act 2005
- Mental Health Act Commission Guidance Note 'Scrutinising and Rectifying Statutory Forms for Admission under the Mental Health Act 1983'

## 18. Distribution

18.1. This procedure will be made available on the UHB intranet and internet sites and be circulated to individual delegated officers and managers of delegated officers and to Adult/MHSOP directorates.

18.2. All wards within Cardiff and Vale UHB should be aware of this procedure to ensure that delegated officers are informed when detention papers are completed.

## 19. Review

19.1. This procedure will be reviewed in 3 years' time, or earlier if required by changes to terms and conditions of legislation.

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**MENTAL HEALTH ACT 1983**  
**ADMINISTRATIVE SCRUTINY CHECKLIST**

***Appendix 1***

Forename		Surname		Date of Birth	
----------	--	---------	--	---------------	--

Date of Admission		Sec		Commenced		Date expiry renewal	
-------------------	--	-----	--	-----------	--	---------------------	--

- Has the application been signed by AMHP or Nearest Relative (NR) Yes/No
- Is the name and address of the hospital correct on the application by the AMHP/NR Yes/No
- Have two medical recommendations been made and signed (S 4 only one needed) Yes/No
- Was one medical recommendation made by a Section 12 approved Doctor Yes/No
- If neither Doctor has previous acquaintance has the AMHP stated a reason Yes/No
- Were Medical Recommendations made within 5 Days of each other Yes/No
- Is the clinical description for admission adequate Yes/No
- Is date of application by AMHP later than or the same date as medical recommendations Yes/No
- Has the AMHP seen the patient personally within 14 days of the application Yes/No
- Is the name and address of the patient the same on all documentation Yes/No\*
- Is the date of the application within 14 days of the admission Yes/No
- Have you received a assessment report from the AMHP Yes/No\*
- In the case of papers received out of hours was the HO 14 completed Yes/No\*
- Is the name and address of the hospital correct on HO 14 Yes/No\*
- Is the date of admission correct on HO 14 Yes/No\*
- Have all alterations been initialled Yes/No\*

\* These are rectifiable errors - if the answer is no to any of the other questions the section papers may have to be re-done

**ON BEHALF OF THE MANAGERS** HEREBY CERTIFY THAT THESE DOCUMENTS ARE CORRECT AND ARE IN ACCORDANCE WITH THE PROVISIONS OF THE MENTAL HEALTH ACT 1983

SIGNED .....	DATE .....
PRINT NAME.....	PRIMARY SCRUTINISER
SIGNED .....	DATE .....
PRINT NAME.....	SECONDARY SCRUTINISER



GIG  
CYMRU  
NHS  
WALES

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

Reference Number: UHB 341  
Version Number: 3  
Date of Next Review: 21/11/2026  
Previous Trust/LHB Reference Number N/A

## MENTAL HEALTH REVIEW TRIBUNAL FOR WALES GUIDANCE

### Introduction and Aim

This policy has been developed in line with the Mental Health Act (MHA) 1983 (2007), the Human Rights Act 1998, the Mental Health Review Tribunal for Wales rules 2008, the MHA Regulations 2008 and the MHA Code of Practice for Wales.

### Objectives

This document is required to ensure correct procedures are followed in relation to all aspects of MHRT proceedings in accordance with the MHA 1983 and the MHRT for Wales rules 2008.

### Scope

This policy is applicable to all employees involved in MHRT proceedings as well as students who may observe Tribunal hearings. This could also be shared with universities where the UHB supports clinical placement.

### Equality Impact Assessment

*Not required for procedural guidance*

### Health Impact Assessment

*A Health Impact Assessment (HIA) has not been completed*

### Documents to read alongside this Procedure

Mental Health Act 1983  
Mental Health Act 2007  
Mental Health Act 1983, Code of Practice for Wales  
Mental Health (hospital, guardianship, community treatment and consent to treatment) (Wales) regulations 2008  
Mental Health Review Tribunal for Wales rules 2008  
The European Convention on Human Rights

### Approved by

Mental Health Act Policy Group  
Mental Health Clinical Board Quality & Safety Committee

### Accountable Executive or Clinical Board Director

*Mental Health Clinical Board*

### Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Governance Directorate](#).

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Summary of reviews/amendments			
Version Number	Date Review Approved	Date Published	Summary of Amendments
1	10/12/2015		<i>State if either a new document, revised document (please list main amendments). List title and reference number of any documents that may be superseded</i>
2	12/11/2018	28/10/2019	<i>Format of reports – should be a social worker who provides the social circumstance report. CTO replaces SCT. Mental Health (Wales) Measure 2010 replaces Care Programme Approach.</i>
3	21/11/2023	23/11/2023	<i>Added the new application appeal form as it includes tick box for patient to choose the format of the hearing (appendix 2).  Added the form ‘request to withdraw an application to the Mental Health Review Tribunal for Wales’ (appendix 3).  Added a nursing report template (appendix 4).  Expanded on paragraphs throughout for clearer clarity and understanding.</i>

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4. Role of responsible clinician/social worker, care coordinator at Tribunal hearings
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7. Tribunal hearing
8. Interpreters
9. Attendance at Tribunal hearings
10. Domestic Violence, Crime and Victims Act 2004
11. Decision of the Tribunal
12. Appeals
13. Complaints

APPENDIX 1 – Mental Health Review Tribunal for Wales Applications and referrals eligibility table

APPENDIX 2 – Application to the Mental Health Review Tribunal for Wales

APPENDIX 3 – Request to withdraw an application to the Mental Health Review Tribunal for Wales

APPENDIX 4 – Nursing report template

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## 1. Introduction

The Mental Health Review Tribunal for Wales is an independent judicial body which deals with applications and references by and in respect of qualifying patients detained under the Mental Health Act (MHA), and provides a significant safeguard for detained patients and guidance on the role of the Mental Health Review Tribunal for Wales and the duties placed on the Hospital Managers and others.

## 2. Information to patients and their nearest relative

When a patient is detained under a qualifying section of the MHA, the Hospital Managers and local social services authority (LSSA) have a duty to ensure that the patient and their nearest relative have been informed of:

- Their rights to apply to the Mental Health Review Tribunal for Wales
- The role of the Mental Health Review Tribunal for Wales
- How to apply to the Mental Health Review Tribunal for Wales
- Their entitlement to free legal advice and representation
- How to contact a suitably qualified solicitor (a list of solicitors who undertake work specifically for the Mental Health Review Tribunal for Wales is available on each ward)
- How to contact any other organisation which may be able to help them make an application to the Mental Health Review Tribunal for Wales
- Their right of access to Advocacy Support Cymru

## 3. Hospital Managers' duties

The Hospital Managers have a duty to refer cases to the Mental Health Review Tribunal for Wales where patients have not exercised their right to apply for a hearing as set out in Section 68 of the MHA. Hospital Managers or those delegated to undertake this duty on their behalf should ensure that there are robust systems in place to alert them to when references need to be sent to the Mental Health Review Tribunal for Wales.

Hospital Managers must refer cases where:

- Detention under Section 2 is extended pending a decision by the County Court to displace a nearest relative under Section 29;
- If the case has not been heard in the first six months or after three years for patients detained under section 3 or 37;
- As soon as possible after the revocation of a patient's Community Treatment Order (CTO);
- References by Welsh Ministers may take place at any time for qualifying patients under Part 2 of the Act (including CTO patients) and unrestricted Part 3 patients.

The Secretary of State for Justice may at any time refer the case of a restricted patient to the Mental Health Review Tribunal for Wales.

A patient cannot withdraw a reference made to the Mental Health Review Tribunal for Wales by the Hospital Managers, Welsh Ministers or Secretary of State for Justice. However, a

patient may withdraw an appeal application by completing a 'Request to withdraw an application to the tribunal' form (see Appendix 3 below). The President will either deny or approve the withdrawal request. The hearing will only be cancelled if the withdrawal has been accepted by the President.

The Hospital Managers should notify the Mental Health Review Tribunal for Wales in the case of a patient who does not have the capacity to instruct a legal representative to represent their case. The Tribunal will assign a legal representative on behalf of the patient in accordance with rule 13 (5)(b)(ii).

#### **4. Role of responsible clinician, social worker/care coordinator at Tribunal hearings**

The responsible authorities (the Hospital Managers or the responsible LSSA for a guardianship patient) will be required to produce reports on the patient's mental and physical health. The request for reports will be initiated by the Mental Health Review Tribunal for Wales via the Mental Health Act office, who will write to the responsible clinician, social worker, nursing staff and potentially others to provide reports within 3 days for Section 2 applications and three weeks for all other Sections from the date of the application, at the latest.

To comply with the Mental Health Review Tribunal for Wales rules, reports must be submitted by the due date. Failure to submit reports by the due date may result in a direction from the President of the Mental Health Review Tribunal for Wales. It could also result in the postponement or adjournment of the hearing. If a professional requires an extension of the report due date, this can be requested from the Mental Health Review Tribunal for Wales ([MHRT@gov.wales](mailto:MHRT@gov.wales)), copying in the Mental Health Act office.

#### **5. Format of reports**

In accordance with Mental Health Review Tribunal for Wales rules, information contained within the report must be accurate and up to date. Reports should comprise of no more than one addendum to a previous report and when submitting addendums, it must include a sentence stating "to be read in conjunction with report dated ....", with the addendum accompanied by the previous/ original report. All reports should have the authors signature and date of signature.

All reports should have the following included on the front page:

- Name of patient;
- Date of birth;
- Legal status;
- Name and grade of professional writing the report;
- Date report completed.

Reports should take the following non-exclusive format:

The responsible clinicians report should include:

- An up-to-date clinical report, prepared for the Tribunal, including the relevant clinical history and a full report on the patient's mental condition;
- The report should also address the statutory criteria relating to the Section to which the patient is subject and the reason why any particular criterion is being relied upon to justify the continuation of the Section.

The social circumstances report should include:

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- The patient's home and family circumstances, including the views of the patient's nearest relative or the person acting so;
- The opportunities for employment or occupation and the housing facilities which would be available if the patient were discharged;
- The availability of community support and relevant medical facilities;
- The financial circumstances of the patient;
- The views of the responsible authority on the suitability of the patient for discharge;
- Where provisions of Section 117 MHA may apply to the patient, a proposed after care plan;
- Any other information or observations on the application which the responsible authority wishes to make.

The nursing report should include:

- Current medication including PRN and compliance;
- Events leading to detention (if an inpatient at the time);
- Any relevant information concerning the nearest relative/family/friends e.g. how the patient interacts with them, how supportive they are and would they be if the patient were to be discharged etc.;
- Patients behaviour on the ward;
- Interaction with other patients/staff;
- Any occupational therapy, physiotherapy, speech and language, psychotherapy or activity nurse involvement;
- How the patient spends their day;
- Brief summary of time spent off ward i.e. within the hospital building/ hospital grounds or Section 17 leave escorted or unescorted;
- Has the patient been AWOL;
- Is the patient at risk of self-harm or suicide – provide details of how you reached this opinion. How are the risks managed;
- The nursing team's opinion if the patient would remain in hospital and accept prescribed medication as an informal patient;
- Please state if the content of this report has been shared with the patient.

Any information which is not to be disclosed to the patient should be written on a separate sheet clearly headed "NOT TO BE DISCLOSED TO THE PATIENT".

The social circumstance report should be provided by a social worker. However, if there is no social work involvement and the report is written by the care coordinator (who is not a social worker), the social work lead for the team the patient is allocated to is required to review the report, sign and date it. However, if there is joint Section 117 responsibility, the local authority should complete a report and attend the hearing.

It is important that all reports are dated and signed and are headed with the patient's name, address, date of birth and name of report writer.

When considering relevant patients' cases, the Mental Health Review Tribunal for Wales will expect to be provided with information from the professionals concerned on what after-care arrangements might be put in place for them. After-care for all patients admitted to hospital for treatment for mental disorder should be planned within the framework of the Mental Health Wales Measure (2010) whether or not they are detained or will be entitled to receive after-care under Section 117.

The onus is on the detaining authority to prove the criteria for continued detention is met.

Guidance on statements and reports, including content and layout is available on the Mental Health Review Tribunal for Wales [website](#).

All reports must be sent to the Mental Health Act office by the report due date, unless an extension has been agreed by the Mental Health Review Tribunal for Wales.

## **6. Content of statements from Responsible Authority and Secretary of State**

The responsible authority must send the 'Statement A' to the Mental Health Review Tribunal for Wales office within a reasonable period after receiving the application or reference. This is done by the Mental Health Act office.

The statement provided must include specific information dependent on the legal status of the patient.

## **7. Tribunal Hearing**

The Mental Health Review Tribunal for Wales will set a date for the hearing to take place. The date will be within seven days from receipt of an application for Section 2, eight weeks from receipt of an application for Section 3, 37, 47, CTO and Ministry of Justice recalls, and within 20 weeks of an application for restricted cases. The confirmed date will be sent to all professionals involved as stated on the Statement A and the Mental Health Act office.

The patient has the choice to decide what format the hearing will be – either via video conference, face to face or no preference. The default method will be face to face however, the patient can change their mind up to 2 weeks before the hearing date. Once the method of hearing and venue has been confirmed, this will be sent out to all professional involved as stated on the Statement A.

The responsible clinician and other staff involved in the patient's care must attend the full hearing so they are aware of all the evidence and the decision. The patient should attend the hearing with their relative, carer, solicitor and/or Independent Mental Health Advocate, if they wish.

A request to withdraw an application must be in accordance with Mental Health Review Tribunal for Wales Rule 22(1) – guidance available on the Mental Health Review Tribunal for Wales [website](#).

## **8. Interpreters**

Where necessary, the Mental Health Review Tribunal for Wales will provide interpretation services free of charge for patients. They should be informed as soon as possible if the patient, their nearest relatives and/or their representatives require such services.

## **9. Attendance at Tribunal hearings**

It is important that the responsible clinician, social worker, nursing staff and other relevant staff involved in the patient's care attend for the full hearing, as their evidence will be crucial in the decision reached by the Mental Health Review Tribunal for Wales as to whether the patient still meets the criteria for continued detention or community treatment order under the MHA.

Patients do not need to attend the hearing but should be encouraged to do so, unless it would be detrimental to their mental health or wellbeing.

## **10. Domestic Violence, Crime and Victims Act 2004**

The Domestic Violence, Crime & Victims Act 2004 sections 35-45 allows victims of persons convicted of a sexual or violent offence where the person is made subject to a hospital order (with or without restrictions), hospital limitation and direction orders, transfer direction without

restrictions or restriction direction, to receive information about discharge arrangements for the patient and make representations to the Tribunal via the Victim Liaison Office (VLO).

Professionals should encourage (but cannot require) mentally disordered offenders to share information that will enable victims and victims' families to be informed about their progress. The DVCV Act 2004 also places a duty on hospital managers, this responsibility has been delegated to responsible clinicians, in relation to certain Part 3 patients who have committed sexual or violent crimes, which includes liaising with victims in order to:

- Advise victims if the patient's discharge is being considered or if the patient is about to be discharged;
- Forward representations made by victims to people responsible for making decisions on discharge or CTO and passing information received from those people;
- Inform victims who have asked to be told, if the patient is to go onto a CTO and of any conditions on the CTO relating to contact with them or their family, any variation of the conditions, and the date on which the order will cease; and
- Inform responsible clinicians of any representations made by the victim about the conditions attached to CTO.

## **11. Decision of the Tribunal**

The decision will be communicated verbally to all parties that attended the hearing at the end (although the Mental Health Review Tribunal for Wales may also reserve its decision) if the hearing is face to face. The Mental Health Act office will be notified of the decision for Section 2 face to face hearings by the attending clerk. The Mental Health Act office will receive a 'verbal' decision along with any recommendations stated, via e-mail within 24 hours if the hearing is via video conference or a face to face Section 3 hearing. This will be forwarded to all professionals involved as stated on the Statement A. A formal written decision including the reasons for the decision will be sent out at a later date, usually within 3 days for a Section 2 and within seven days for all other Sections.

## **12. Appeals**

The Upper (First-tier) Tribunal will consider applications for permission to appeal against a Tribunal decision on a point of law under section 78A of the Mental Health Act 1983. The Tribunal office must receive a written application no later than 28 days after the date of the written decision.

The Tribunal may grant permission to appeal, but must comply with Rule 5(b) in the event that permission is refused.

## **13. Complaints**

Complaints from service users about the Mental Health Review Tribunal for Wales should be sent to the Tribunal office:

Address –

Mental Health Review Tribunal for Wales  
2<sup>nd</sup> Floor  
Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

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Phone –  
0300 025 5328

E-mail –  
[MHRT@gov.wales](mailto:MHRT@gov.wales)

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<b>Mental Health Review Tribunal Applications and referrals eligibility table</b>			
<b>Section</b>	<b>Application by patient</b>	<b>Application by nearest relative</b>	<b>Automatic reference by Hospital Managers (section 68), Welsh Ministers or Secretary of State for Justice (section 67)</b>
Section 2 Admission for assessment	Within the first 14 days	No right to apply	Not applicable
Section 3 Admission for treatment	Within the first six months of detention, during next six months and then during each subsequent period of one year.	Within 28 days from the Responsible Clinician issuing a report barring their request to discharge the patient.	If no MHRT in the first six months of section (including any time detained under section 2 if it runs consecutively and no appeal held), then every three years. One year for a child under 18 years of age.
Section 7 Reception into guardianship	Within the first six months of reception, during next six months and then yearly.		
Section 19 Transfer from guardianship to hospital	Within six months of the day on which the patient was transferred.		If no MHRT in first six months of transfer; thereafter every three years.
Section 17A Community Treatment Order	Within the first six months of supervision, during next six months and then yearly.	Within the first six months of supervision, during next six months and then yearly.	If patient has not applied within the first six months, then every three years. One year from date case last considered.
Section 29 Nearest relative displaced by Court (Part 2 patients only)		Within one year after Court orders displacement and subsequently in each period of a year for which order is in force.	Welsh Ministers may be asked to refer the patient to the Tribunal under section 67.
Section 37 Hospital Orders without restrictions	Between six and 12 months of the Order and then yearly.	Between six and 12 months of the Order and then yearly.	If three years have elapsed since last MHRT (one year for patients under age 18).
Section 37 Guardianship Order (by Court)	Within first six months of Order, during next six months and then yearly	Within one year of Order being made and then in each period of one year.	
Restricted Hospital Order (s.37/41) and CP I (5)	Between six and 12 months after the making of the order or direction and then yearly		Reference by Secretary of State for Justice if no appeal within the last three years.
Recall of a conditionally discharged patient	Between six and 12 months period of re-admission, then each subsequent 12 month period.		Reference by Secretary of State for Justice within one month of recall to hospital.
Restricted patient who has been conditionally discharged	Between one and two years after conditional discharge and then every subsequent two-year period thereafter.		

Section 17F Revocation of CTO	Within first six months of the order being revoked.		The Hospital Managers must refer the case as soon as possible after the CTO is revoked.
Transfers of prisoners with restrictions	Within first six months of warrant being made, six monthly then yearly.		Reference by Secretary of State for Justice if no appeal within the last three years.

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MHRTW-01

Tribiwnlys Adolygu  
Iechyd Meddwl Cymru

Mental Health Review  
Tribunal for Wales

Application Form

Subject to a Section of the Mental Health Act 1983

It is important that you read our guidance booklet **How to apply to the Tribunal (MHRTW-06)** before filling in this form.

If printed, please write clearly in **BLACK** ink.

Please complete this form as far as you are able. If you require assistance, please ask the ward staff, your advocate, social worker, care co-ordinator or legal representative. This application form is also available in Welsh.

The Mental Health Review Tribunal for Wales welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English. You may submit forms, documents and make written representations to the tribunal in Welsh or English and your hearing can be held in Welsh if you wish.

Please put a tick in the appropriate box to confirm your language of choice.

Welsh☐

English☐

Section 1 – Your Information

Title:

Surname:

First names:

Date of Birth:

Section or Order of the Mental Health Act to which you are subject:

Date the Section/Order commenced:

Hospital / Current Address (including postcode):

Ward Name:

Name of Responsible Clinician:

## Section 2 – Information about your Legal Representative

You do not have to have a legal representative, but if you do, please provide their details below:

**Title:**  **Surname:**  **First Names:**

**Email address:**

**Address** (including postcode):

**Telephone:**

**I do not want to be legally represented:**

**I wish to be legally represented, please send a list of mental health solicitors:**

## Section 3 – Tribunal Hearing Preferences

**How would you prefer to have your tribunal hearing conducted? (Please tick)**

**In person**

☐

**By video**

☐

**No preference**

☐

Whilst the Tribunal will attempt to arrange hearings in accordance with your preference, this cannot always be guaranteed.

## Section 4 – Your signature

This application must be signed by you (or someone you have authorised to sign on your behalf)

**Signed**

**Print Name**

**Date**

If you are signing on behalf of the applicant named in Section 1, please confirm they have authorised you to do so and confirm your relationship to them.

I confirm that the applicant named in Section 1 has authorised me to sign on their behalf (tick)

☐

**Relationship to applicant**

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## Section 5 - Sending us the application

Once you have filled in this form, please make sure that you have made a copy of it for your own records and that you have signed it.

Please send the application to us at:

**Mental Health Review Tribunal for Wales**  
**PO Box 1134**  
**Cardiff**  
**CF11 1WX**

Alternatively, the form can be submitted via email [MHRTApplicationsReferrals@gov.wales](mailto:MHRTApplicationsReferrals@gov.wales)

If you need to contact us by telephone our number is: **0300 025 5328**

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Please complete this form as far as you are able.  
If you require assistance please ask the ward staff, your advocate,  
social worker, CPN or legal representative

Title:		Mr / Mrs / Ms / Miss (delete as applicable)		Other:	
Full name:					
Date of Birth:			Section:		Date Section commenced:
Hospital/Current Address:					
Ward Name:			Responsible Clinician's Name:		

Legal representative's name and address: (if applicable)	
--	--

I wish to withdraw my application to the Tribunal.

Reasons:

P.T.C.

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7/2023

P.T.C

**3. (continued)**

I confirm that:

- a. I make this request to withdraw my application of my own free will,
- b. I am aware of my right to free legal representation, and
- c. I have taken the advice of my legal representative whose details are given above in relation to this application or
- d. I do not wish to be legally represented but I am aware of my rights under the Mental Health Act to make a further application to the Tribunal within the statutory time limits.

Signature:

Name:

Date:

**4. To be completed by Legal Representative**

I confirm that I have interviewed my client (name) \_\_\_\_\_ who has instructed me that (s)he wishes to withdraw her/his application to the Tribunal which was made on (date) \_\_\_\_\_ for the Reasons given in Section 3 above. I confirm that I have advised my client of her/his rights under the Mental Health Act 1983 (as amended) and that I am satisfied that her/his application is made with understanding of those rights and without coercion or undue influence from any other person or body.

Any other relevant information:

Signed:

Name:

Date:

**5. Sending us the withdrawal request**

Once you have completed and signed this form please send it to:

MHRT Wales  
2<sup>nd</sup> Floor  
Crown Building  
Cathays Park  
Cardiff, CF10 3NQ Or:

e-mail it to: [mhrt@wales.gsi.gov.uk](mailto:mhrt@wales.gsi.gov.uk)

Contact number: 03000255328

Fax: 03000256331

Nursing Report: Mental Health Review Tribunal/Managers Hearing	
Name of the Patient	
Date of Birth and Age	
Status under the MHA	
Date Section Commenced	
Name of Ward and Specialty	
Current Home Address	
Primary Nurse	
Responsible Clinician	
Name and designation of Author	
Independent Mental Health Advocate (include involvement)	
Communication requirements (Eg is an interpreter required, sign language used)	
Sources of information used in completing the report	

Chilcott, Rachel  
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1. Are there any factors that might impact on the patient's understanding or ability to participate in the tribunal/hearing? Are there any additional adjustments that could be considered to facilitate a fair hearing?
2. Describe the nature of nursing care being delivered, including medications, care plans and indicate the level of engagement and compliance the patient demonstrates.
3. What are the levels of nursing observations for the patient? Please give rationale.
4. Please describe the patient's social network, levels of support and the nature of relationships with family and friends, as an inpatient and when in the community.
5. What professional support is available to the patient when in the community?
6. Summarise the patients progress. Please consider: insight, behaviour on ward, activities of daily living, daily structure, levels of engagement with treatment, interactions with staff and peers.
7. What are the patient strengths?
8. Has the patient ever been absent without official leave or failed to return from leave? Please provide dates. Describe the patient views of these incidents.
9. Has the patient engaged in violence or aggression to property or person? Please give details.
10. Has the patient harmed themselves or expressed suicidal ideation? Please give details.
11. Please state the nursing view of future engagement, risks and compliance if the patient were to be discharged from hospital. Include medication compliance, engagement with professional services, whether the patient would be a risk to themselves or others and how risks might be mitigated.
12. Please state the nursing recommendations to the Tribunal/Hearing.
Signed, including designation:
Dated:

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